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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No. 335

RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR, PETITIONER,

vs.

THE UNITED STATES OF AMERICA, EX REL. CHESTATEE PYRITES & CHEMICAL CORPORATION

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED AUGUST 31, 1932

CERTIORARI GRANTED OCTOBER 17, 1932

(37,032)

RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR, PETITIONER,

vs.

THE UNITED STATES OF AMERICA, EX REL. CHESTATEE PYRITES & CHEMICAL CORPORATION

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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1 [Caption omitted.]

Filed February 18, 1929

In Supreme Court of the District of Columbia

As a District Court of the United States

At Law No. 76364

THE UNITED STATES OF AMERICA, EX REL. CHESTATEE PYRITES & Chemical Corporation

vs.

ROY O. WEST, SECRETARY OF THE INTERIOR

Petition for review and mandamus

The petition of the United States on the relation of Chestatee Pyrites & Chemical Corporation respectfully represents:

I

The relator, Chestatee Pyrites & Chemical Corporation, is a corporation duly and legally organized and existing under the laws of the State of Georgia, a citizen of the State of Georgia, residing in the county of Fulton in said State and this petition is brought to review the final decision of the Secretary of the Interior upon a question of law which has heretofore arisen in the adjustment, liquidation, and payment of relator's claim under the act hereinafter named and against Roy O. West, a citizen of the State of Illinois, officially residing in the District of Columbia.

II

That the said Roy O. West, respondent, is Secretary of the Interior of the United States, and as such charged with the administration of the laws of the United States relative to the war minerals claims and especially section 5 of the act of March 2, 1919, and the amendments thereto, including the amendment entitled "A bill to amend section 5 of an act approved March 2, 1919, known as the war minerals act," approved February 13th, 1929, and such respondent is sued in his official capacity as Secretary of the Interior as aforesaid.

2 III

The said respondent as Secretary of the Interior and his predecessors in office under said section 5 of the said act as amended was and is authorized to adjust, liquidate, and pay net losses suffered by

any firm, person, or corporation by reason of producing or preparing to produce pyrites in compliance with the request or demand of the Department of the Interior when such production was to supply the urgent needs of the Nation in the prosecution of the war.

IV

The Chestatee Pyrites & Chemical Corporation between the dates of the 6th of April, 1917, and the 11th day of November, 1918, in preparing to produce and in producing pyrites in compliance with the request of the Department of the Interior to supply the urgent needs of the Nation expended and incurred obligations in good faith for and upon property containing pyrites in sufficient quantities to be of commercial importance.

V

As authorized by said act of March 2, 1919, section 5, the Chestatee Pyrites & Chemical Corporation, on March 5, 1919, filed its claim with the Secretary of the Interior seeking and praying that an award be made to it under said act of its net losses for the expenditures made and obligations incurred by complainant in good faith upon property which contained pyrites as described in section 5 of said act.

VI

In the said petition or claim filed as aforesaid this relator as part of said expenditures and obligations, claimed as a loss expenditures for salaries paid its executive officers, for property taken over as a result of the request and demands of the Department of Interior, for taxes and for legal expenses.

VII

Hearings were had before the agencies established by the Department of Interior, and an award was made for other items of relator's losses, but the respondent and his predecessors in office denied any award for the items stated in Paragraph VI hereof.

VIII

Relator's losses stated in Paragraph VI hereof were denied not because of any issue of fact, but because the Secretary of the Interior held as a matter of law that such items of loss were not included within the provisions of said act.

IX

Thereafter, the Congress of the United States by the act hereinbefore described, approved February 13th, 1929, gave jurisdic-

3 tion to this court to review the final decision of the Secretary of the Interior upon any question of law which has arisen or which may arise in the adjustment, liquidation, and payment of claims under said section 5 of the act approved March 2, 1919, and amendments thereto.

X

In this case the present Secretary of the Interior, respondent herein, has refused to reopen the decisions of his predecessors in office and there has been a final decision of the Secretary of the Interior based upon the question of law for it is not disputed that relator paid and lost monies in the purchase of property, salaries, and legal expenses, and in that it is claimed by respondent as a matter of law such loss is not reimbursable under the law.

XI

Respondent and his predecessors in office erred as a matter of law in not finding that salaries, the property taken over in the nature of the purchase of property, taxes, and legal expenses lost as aforesaid by relator, were losses allowable under said act of March 2, 1919.

XII

Wherefore, petitioner on behalf of the relator aforesaid, prays:

1. That this court review the final decision of the Secretary of the Interior and his predecessors in office upon the question of law involved and direct said Secretary, respondent herein, to make an award of such amount as the facts show is due for purchase of property, for all salaries, and legal expenses.

2. That a writ of mandamus be issued directing the respondent, Roy O. West, Secretary of the Interior, to take jurisdiction of the claim of relator for expenditures made in the purchase of property, salaries, and legal expenses, as hereinbefore set forth and to allow such sum as may be just and equitable therefor, and to adjust and pay relator's net losses in the purchase of property.

3. That such other order or orders be entered as this court may deem necessary under the law.

4. That a rule may issue requiring respondent, Roy O. West, as Secretary of the Interior, to show cause, if any he can, why this court should not review said final decision and why a writ of mandamus should not issue as herein prayed.

CHESTATEE PYRITES & CHEMICAL CORPORATION,
By GEO. L. PRATT, *Vice President and Treasurer.*

[*Duly sworn to by George L. Pratt; jurat omitted in printing.*]

4 In Supreme Court of District of Columbia

Memorandum re substitution

Ray Lyman Wilbur, as Secretary of the Interior, substituted as respondent in the place and stead of Roy O. West, on March 15, 1929.

In Supreme Court of District of Columbia

Response to the rule to show cause

Filed March 15, 1929

* * * * * * *

Comes now Ray Lyman Wilbur, Secretary of the Interior, and responding to the rule to show cause herein, suggests to the court that the petition for review presents only the following question, namely, was a claimant engaged in producing or preparing to produce any of the minerals named in the act of Congress, which sustained a net loss on account of expenditures in the (a) purchase of property, to wit, land; (b) payment of taxes, (c) salaries, (d) attorney's fees or other legal services, entitled to have such losses reimbursed under the provisions of the war minerals relief act of March 2, 1919 (40 Stat. 1272), as amended?

The Secretary of the Interior decided in the negative as to each of said items, as shown by copies of the various decisions of the Secretary of the Interior and recommendations of the War Minerals Relief Commissioners marked, respectively, Exhibits A, B, C, D, and E, attached to the response to the rule to show cause in No. 76361 law, entitled the United States of America, ex rel. Chestatee Pyrites & Chemical Corporation v. Ray Lyman Wilbur, Secretary of the Interior, in this court, all of which exhibits are hereby referred to and made a part hereof.

Under the act of February 13, 1929, Public No. 728, 70th Congress, this court is vested with jurisdiction to review such questions of law as may have been decided in the disposition of petitioner's said claim by the Secretary of the Interior, and respondent makes no objection to, but on the other hand invites, a review of such questions. The petition for review presents the sole question for which petitioner prays a review herein, and it is assumed that the court will confine its review to the single question raised.

RAY LYMAN WILBUR,
Secretary of the Interior.
By E. C. FINNEY,
Solicitor, Interior Department.
O. H. GRAVES,
Assistant to the Solicitor.
_____ _____,
Attorney General.

5 In Supreme Court of District of Columbia

Demurrer to response

Filed March 15, 1929

* * * * * * *

Comes now the relator by its attorney and says that the answer of respondent to the rule to show cause and to the petition herein is bad in substance.

NOTE.—Points to be argued:

1. That as shown by the answer and response and the undisputed allegation of the verified petition herein, relator suffered net losses from payments made for the purchase of property, land, payment of taxes, salaries, and legal fees used in producing pyrites; that relator in making such and other expenditures complied with all the conditions of the law authorizing it to receive payment of its net losses; that respondent's predecessors in office refused to consider such net losses in the final decision making relator an award of other parts of its net losses. That from such facts such net losses for which an award was denied and payment refused are in law proper items to be included under awards required to be made by the Secretary of the Interior by the provisions of section 5 of the act of March 2, 1919, and act amendatory thereof, which statutes are referred to in the pleadings herein.

2. This court has jurisdiction and authority under the act of February 13, 1929, to determine the question of law herein involved and to enter such order herein as may be necessary to enforce its conclusion on such question of law.

EDGAR WATKINS,
Attorney for Relator.

Service accepted and receipt of copy acknowledged this 15th day of March, 1929.

O. H. GRAVES,
Attorney for Respondent.

In Supreme Court of District of Columbia

Stipulation re withdrawal of response, etc.

Filed September 24, 1929

* * * * * * *

It is hereby stipulated and agreed by and between counsel for petitioner and counsel for respondent—

(1) That the response heretofore filed herein be withdrawn and stricken from the record.

(2) That the uncertified copies of the findings of the Secretary of the Interior and the War Minerals Relief Commission and the Assistant Commissioner of War Minerals, attached to the substituted answer in 76361 law, may be considered by the court in connection with this case, with the same effect as though they were the originals thereof.

6 (3) That the respondent be permitted to file and serve an answer in lieu of said response, and the demurrer to the response now on file be considered a demurrer to such answer.

(4) That this case remain in statu quo upon the docket of this court until further order of the court.

Dated September 2, 1929.

EDGAR WATKINS,
Attorney for Petitioner.
O. H. GRAVES,
Attorney for Respondent.

In Supreme Court of District of Columbia

Order allowing withdrawal of response, etc.

Filed September 24, 1929

* * * * * * *

In accordance with the stipulation of counsel for the respective parties in this case, dated September 2, 1929, and duly filed herein, it is this 24th day of September, 1929, adjudged and ordered:

1. That the respondent be and he hereby is permitted to withdraw from the record the response to the relator's petition for mandamus heretofore filed by him.

2. That the respondent be and he hereby is permitted to file and serve an answer in lieu of said response, and that the relator's demurrer to said response which is now on file, be permitted to stand and be considered as a demurrer to such answer.

3. That the uncertified copies of the findings of the Secretary of the Interior, of the War Minerals Relief Commission, and of the Assistant Commissioner of War Minerals, which are attached to the substituted answer to be filed by the respondent in case at law No. 76361, entitled United States of America ex rel. Chestatee Pyrites and Chemical Corporation *v.* Ray Lyman Wilbur, Secretary of the Interior, may be considered in this case by the court with the same effect as though they were original papers.

4. That this case remain in statu quo upon the docket of this court until further order of the court.

WENDELL P. STAFFORD,
Justice.

In Supreme Court of District of Columbia

Answer to the petition for mandamus

Filed September 24, 1929

* * * * * * *

For answer to the petition in the above-entitled cause, the respondent, Ray Lyman Wilbur, says as follows:

1. The respondent admits that the allegations of the first paragraph of the petition were substantially correct at the time it was filed.

2. The respondent says that since the petition in this case was filed, Roy O. West, the respondent named therein, has ceased to be the Secretary of the Interior, and that this respondent, Ray Lyman Wilbur, now is Secretary of the Interior. The respondent
7 says that such authority and duties as were granted to or were imposed upon his predecessor by the act of March 2, 1919, and its amendatory acts, have devolved upon this respondent.

3. The respondent admits the substance of the allegations of the third paragraph of the petition.

4. The respondent admits the allegations of the fourth paragraph of the petition, upon information and belief.

5. The respondent admits the allegations of the fifth paragraph of the petition, except that he says that the petitioner's war minerals claim was not filed in due form until April 1, 1919.

6. Answering the allegations of the sixth paragraph of the petition, the respondent says that the claim filed by the petitioner and known as war minerals claim No. 1, requested the payment of an item of $25,966.67, representing salaries alleged to have been paid by the petitioner to its executive officers; an item of $834.76 representing taxes paid by the petitioner; an item of $585.75 representing money paid for legal services; and an item of $750 representing a part of the purchase price of real estate acquired by the petitioner. The respondent says that he assumes that these are the expenditures referred to in the sixth paragraph of the petition, as the petition itself fails to identify the exact items of expense to which it relates. With respect to the real estate purchased by the petitioner, the respondent denies that the purchase was made at the request and demand of the Department of the Interior.

7. The respondent admits the allegations of the seventh paragraph of the petition.

8. Answering the eighth paragraph of the petition, the respondent says that he is not informed whether payments of the character and in the amounts claimed by the petitioner, as hereinbefore stated, actually were made by it as a matter of fact, and he says that he will demand strict proof of the fact should its proof become necessary.

The respondent says that he admits, however, that the then Secretary of the Interior held as a matter of law that the items of alleged expense in question could not be considered as losses under the provisions of the act of March 2, 1919.

9. The respondent admits the allegations of the ninth paragraph of the petition.

10. Answering the allegations of the tenth paragraph of the petition, the respondent says that he does not admit that the petitioner paid and lost money in the purchase of property, in salaries, and in legal expenses. On the other hand, he expressly denies that any loss resulted to the petitioner by reason of paying money on account of the items specified.

11. The respondent denies that he, or his predecessors in office, committed the error of law alleged in the eleventh paragraph of the petition.

12. Answering the entire petition, the respondent says that after the Chestatee Pyrites and Chemical Corporation had filed its war minerals claim No. 1, as aforesaid, the claim and all of its items were carefully examined by the War Minerals Relief Commission and by the respondent's predecessors in office, the former Secretaries of the Interior, and that a full opportunity was given to the
8 claimant to present all the facts in connection with its claim and to be heard with respect thereto, and that a number of hearings with respect to the claim actually were had both before the War Minerals Relief Commission and the said former Secretaries of the Interior.

The respondent says that as a result of such examination and hearings, as aforesaid, the War Minerals Relief Commission, under date of June 5, 1919, recommended to the then Secretary of the Interior that an award in the amount of $133,528.46 be made to petitioner, and stated that the amount of the payment recommended was the entire sum for which the United States Government appeared to be under moral or statutory obligation.

The respondent says that thereafter, on August 8, 1919, the then Secretary of the Interior, the Hon. Franklin K. Lane, found in favor of the petitioner for a sum in excess of that recommended by the War Minerals Relief Commission, and made an award to it of $219,607.90.

The respondent says further that on October 15, 1919, Secretary Lane increased the amount of his award to $223,529.17, and that that amount was paid to and actually received and accepted by the petitioner.

The respondent says further that thereafter, as the result of a further consideration of the petitioner's claim by the War Minerals Relief Commission and Hon. Albert B. Fall, the then Secretary of the Interior, the Secretary made an additional award of $469,784.62 in the petitioner's favor, which amount was paid to and actually received and accepted by it.

The respondent says that Secretary Fall in making his award as aforesaid, made the following statement:

"I have investigated this case and listened with great interest and a large degree of sympathy to the statements made by counsel for the claimants, and to the arguments advanced with reference to the matter of allowing interest upon this claim; additional allowance for services, and an allowance of an increased amount for compensation for the free-stimulation plant.

"After full consideration, I am confident that the conclusions reached by the commission are as nearly correct as it is humanely possible to arrive at a just and equitable sum to be awarded in relief, I therefore, find myself impelled to make the award as recommended, in the sum of four hundred sixty-nine thousand, seven hundred eighty-four dollars and sixty-two cents ($469,784.62)."

The respondent says that he believes from the record and evidence in the case, that the aforesaid statement of Secretary Fall was correct, and that the amount of the additional award then made was as nearly correct as it was humanely possible to arrive at a just and equitable sum to be awarded in relief, and that the entire amount of $693,413.79 which was paid to and received and accepted by the petitioner as aforesaid, represented all that the petitioner was justly and equitably entitled to receive under the terms of the act of March 2, 1919.

The respondent says that so far as he is advised, the petition in this case, as stated in paragraph six of this answer, refers to payments said to have been made by the petitioner comprising $25,966.67
salaries of its executive officers; $834.75 taxes; $585.75 for legal
9 services; and $750 for certain real estate acquired by the petitioner, which were all disallowed as losses in the adjustment of its claim.

With respect to the item of $25,966.67, the respondent says that the Chestatee Pyrites and Chemical Corporation was organized and incorporated by N. P. Pratt and George L. Pratt, who thereupon became and continued to be its sole stockholders. The respondent says that N. P. Pratt and George L. Pratt elected themselves to be the executive officers of the corporation, and voted and paid to themselves from the funds of the corporation the sum of $25,966.67 as executive salaries.

The respondent says that the interests of the corporation and its two stockholders were so closely identified that in filing war minerals claim No. 1, as aforesaid, the claim was filed in the names of the Chestatee Pyrites and Chemical Corporation, N. P. Pratt and George L. Pratt jointly. The respondent also says that the warrants issued in payment of the two awards made to the petitioner were drawn in favor of the Chestatee Pyrites and Chemical Corporation, N. P. Pratt and George L. Pratt jointly.

The respondent says that in considering and adjusting the said war minerals claim No. 1, the War Minerals Relief Commission and

the former Secretary of the Interior found that the said sum of $25,966.67 paid to themselves by N. P. Pratt and George L. Pratt did not represent a loss suffered by the corporation, or by its stockholders in producing or preparing to produce pyrites, and that it was not just and equitable that the amount so paid should be repaid by the United States. Both the War Minerals Relief Commission and the former Secretary of the Interior found, however, that it was just and equitable that a per diem allowance of $4 each should be made to N. P. Pratt and George L. Pratt for the period of 508 days, in lieu of salary, and that the amount of $4,064 accordingly was awarded on that account and included in the payment made to and actually received and accepted by the corporation and its stockholders, as aforesaid.

The respondent denies that the disallowance of the item of $25,966.67, as aforesaid, constituted an error of law, because he says that the act of March 2, 1919, did not contemplate that the executive officers of a corporation, who also were its sole stockholders, might withdraw the funds of the corporation, for their own benefit, and thereafter demand repayment of the same on behalf of the corporation in the guise of a loss sustained by it in producing and preparing to produce manganese.

With respect to the item of $834.76 paid for taxes, the respondent says that the amount in question was paid in the discharge of a burden imposed by the State of Georgia, or one of its political subdivisions, for the support of the State or for public purposes, that it did not represent the payment of a debt, and that the payment being made in the discharge of an obligation of citizenship did not and could not involve a loss. The respondent says further that it would be against public policy for the United States to directly or indirectly assume the burden of a tax assessed by a State, or its political subdivisions, against one of its own citizens. The respondent says further that he is advised that the taxes in question were assessed to, or assumed and paid by the petitioner as lessee pursuant to an agreement entered into with the lessor of the taxed land prior to the period covered by the act of March 2, 1919, and that, therefore, the payment made by the petitioner in any event was not within the scope of that act.

With respect to the item of $585.75 said to have been paid for legal services, the respondent says that attorney's fees represent the personal expense of the client who pays them. The respondent says further that he is informed and believes that the legal services represented by the payment aforesaid, as a matter of fact, were rendered in connection with a matter which had no relation to a production or a preparation to produce pyrites by the petitioner, and accordingly were not within the terms of the act of March 2, 1919.

With respect to the item of $750 said to have been paid for real estate purchased by the petitioner, the respondent says that he is informed and believes that the petitioner purchased the fee simple title to a certain tract of land for $1,590. Thereafter the petitioner removed the timber from the land which it used in connection with its mining operations. In presenting its war minerals claim as aforesaid, the petitioner estimated the value of the timber removed from the land at $840, and claimed repayment for the balance of the purchase price of the land, amounting to $750, although it still continued to retain title to the land in fee simple. The respondent says as a matter of fact that no loss resulted to the petitioner by reason of this transaction.

The respondent says, therefore, that no error of law was committed by any of the former Secretaries of the Interior in refusing to make an award in the petitioner's favor because of any of the items of its claim which are involved in this proceeding, and that no error of law was committed by the respondent in affirming and adhering to their decisions in that respect.

Having fully answered the petition, the respondent asks to be hence dismissed with costs.

RAY LYMAN WILBUR,
Secretary of the Interior.
By JOS. M. DIXON,
Acting Secretary of the Interior.

[*Duly sworn to by Jos. M. Dixon; jurat omitted in printing.*]

11 In Supreme Court of District of Columbia

Law 76364

Agreement re exhibits

Filed January 7, 1932

UNITED STATES DEPARTMENT OF THE INTERIOR,
Washington.

It is agreed that the attached exhibits A, B, C, D, & E are true copies of exhibits referred to in the answer and filed therewith, and may be filed and used the as originals x in Docket No. 76364—Chestatee &c. v. Wilbur.

O. H. GRAVES,
Atty. for Dept.
EDGAR WATKINS,
Atty. for Relator.

JANUARY 7, 1932.

EXHIBIT A

Commissioners: John F. Shafroth, Martin D. Foster, Philip N. Moore

DEPARTMENT OF THE INTERIOR,
WAR MINERALS RELIEF COMMISSION,
Washington, June 5, 1919.

The honorable the SECRETARY OF THE INTERIOR.

DEAR MR. SECRETARY: In the matter of claim No. 1, Chestatee Pyrites and Chemical Corporation and N. P. Pratt and George L. Pratt, referred by you to this commission for investigation, your commission beg to recommend an award of $133,578.46 as the entire sum for which the United States Government bears any moral or statutory obligation.

Very truly yours,

(Signed) JOHN F. SHAFROTH,
M. D. FOSTER,
PHILIP N. MOORE,
Commissioners, War Minerals Relief Commission.

[Copy]

EXHIBIT B

DEPARTMENT OF THE INTERIOR,
Washington, Aug. 8, 1919.

In re Chestatee Pyrites & Chemical Corporation, N. P. Pratt and George L. Pratt. Claim No. 1

The above is a claim under the war minerals relief act (section 5, act of March 2, 1919, 40 Stat. 1274). The law authorizes compensation for losses incurred in the production of pyrites during the war due to stimulation by the Government.

Here there was such stimulation commencing June 18, 1917. I have reviewed the record and brief filed and an award of $219,607.90 is made. This is based upon the report of the War Minerals Relief Commission, but with 56.6 as the percentage of stimulation and a partial allowance of the financing item.

12 Nothing has been allowed for the railroad since it appears that the rails were bought prior to the stimulation and the correspondence indicates the claimants' purpose to build prior to the Government's request. No allowance has been made for the salaries.

(Signed) FRANKLIN K. LANE, *Secretary.*

EXHIBIT C

UNITED STATES DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, October 15, 1919.

In re Chestatee Pyrites and Chemical Corporation, N. P. Pratt and George L. Pratt. Claim No. 1

In the above claim under the war minerals relief act, section 5, act of March 2, 1919 (40 Stat. 1274), an award of $219,607.90 was made August 8, 1919. Nothing was there allowed for the railroad. Additional testimony as to the railroad has now been submitted. The claimants have also urged that the amount of expenditure to which the percentage of stimulation was applied should be increased.

I have reviewed the record, the report of the War Minerals Relief Commission, and the exceptions thereto filed. No reason is found for disturbing the prior ruling as to the railroad. To the amount of expenditure upon which the percentage of stimulation (56.6%) is applied, the sum of $6,928.04 is added.

The award is accordingly increased to $223,529.17.

(Signed) FRANKLIN K. LANE.

EXHIBIT D

SEPTEMBER 22, 1922.
JB–WCS

Claim No. 1, The Chestatee Pyrites and Chemical Corporation, Atlanta, Georgia

Memorandum in review of—

This claimant had a partially developed plant at the time of Government interference, and the claim represents the loss due to the expanded operations under Government stimulation. It was the first claim considered under the original war minerals relief act.

The commissioners had had no experience in dealing with big, complex claims, and therefore no rules or policies had been tested by actual application. They attempted to fix the loss through percentages; that is, by basing it upon the proportion the amount claimant meant to expend and produce under his own nonstimulated plans bore to the estimated expenditure and production of the bigger mill, under Government stimulation. The result was that the percentage fixed by the commission was increased by the Secretary and, later, by the latter still further increased, with the claimant insisting that all were too low, and that the percent should apply to all the expenditures instead of to only a part of them.

It may be said now, without criticism of the former commission that the plan was unsatisfactory in some respects. Percent-

13 ages and ratios were confusing, and the element of doubt was too great. A more easily understood and more workable plan was adopted in the consideration of claims which came later.

In the present review, the former plan is not ignored entirely, as will be seen by the auditor's report, but the claim is considered practically de novo, in the belief that it is better to apply rules which have grown out of experience, and with which examiners are familiar, than to merely consider the alleged errors of a plan which is unfamiliar, because abandoned long before the amended act, under which we are not considering these claims, was passed. The auditor was directed to audit this claim in the same manner that all claims are now being audited. This meant that he was to treat the company as a going concern on the date of stimulation; that any loss or profit prior to that date, concerning which even claimant and counsel are not in perfect agreement, was claimant's own, with which the Government is not concerned; that all expenditures during the stimulation period, or which properly should be charged to the period, were to be listed; that deductions for items not allowable and salvage were to appear, and that the net loss was thus to be shown.

There may be controversy, later, over the items disallowed, or the salvage, but the plan itself can at least be understood, and the points in controversy, if controversy should follow, will not only be reduced in number, but they will be set out plainly. By this method the Government takes no account of the operations before stimulation, when it was not responsible for either losses or profits, but ascertains the loss during the stimulated period, for which it is responsible, by simply deducting from the expenditures for that period the items which must be disallowed, the receipts, and the salvage. Pursuant to these instructions the claim was audited, and the auditor's report, which is submitted herewith, shows that the task was performed with painstaking care and intelligence. Based upon that report, but not agreeing with the conclusions in every particular, the expenditures, deductions, and net loss are hereinafter set out.

It will be observed that the expenditures for the building of the railroad, which heretofore have been denied, are allowed. Considered under the amended act, and in the light of the accepted practice, there is no reason whatsoever why the expenditures for this railroad should not be compensated. Claimant, before stimulation, may have had it in mind some day to build the road, and he may have taken advantage of the opportunity to purchase some rails at a low price, but there is not the certainty that he would ever have built it. A fair deduction would be that the plan to build the road had been abandoned. There is the certainty that the road was built after Government stimulation; that Secretary Lane approved if he did not direct the building; that it was necessary in connection with the mining project, and claimant testifies that but for such stimulation and such urgency the expenditure would not have been made. The record is so clear, and so complete as to details, that there can be no reasonable doubt as to Government responsibility.

DEDUCTIONS

All interest charges have been deducted. It is not believed that the act contemplates the payment of interest on borrowed
14 capital. Counsel for claimant has filed a brief on this point in which, after acknowledging that in claims against the Government, interest is not allowed before judgment, he cites exceptions to the rule and attempts to place the beneficiaries of this act in the excepted class. He points to the contributions made by citizens in aid of the Revolutionary War, and the War of 1812, wherein interest was allowed when, finally, these advantages were repaid by the Government. But the claimants under the war minerals relief act do not stand in the same moral relation as did the persons who advanced money to the Government during the Revolutionary War or the War of 1812. The difference is that the early patriots placed their money at the disposition of their Government without expectation or chance of profit, but with the probability that all would be lost, while claimants under the war minerals relief act engaged in a business enterprise, with hope and expectation of profit. The Government now, because it publicly urged increased production of the ores, voluntarily repays net losses in cases where the hope of profit was not realized. The difference is plain.

Counsel, further, cites the case wherein the State of New York, by a decision of the Supreme Court, was refunded interest on bonds, which were issued to equip troops for the Civil War. Here, however, there was between the State of New York and the Government what amounted to a definite contract, Secretary Seward having wired the New York State officers to raise and equip the troops and stating that the Government would refund to the State the expenses incurred. Also, Congress had passed an act authorizing the refund. That is why the New York case was made an exception to the rule laid down by the Supreme Court, the language of which rule is as follows:

"Interest is not to be awarded against a sovereign government unless its consent to pay interest has been manifested by an act of its legislature, or by a lawful contract of its executive officers."

There were present in the New York case what the Supreme Court held to be a "lawful contract," which contemplated the repayment of interest, and the necessary legislative action.

Counsel also bases the claim for interest upon the equity provision of the war minerals act. The equity provision is a broad provision. The act, it is supposed, would be administered in equity even though the provision were absent. But the provision which says that no profits shall be allowed, is a specific provision, not to be ignored on the ground that "equity" would prevent its observance. It is because of this specific provision that interest on an operator's own money can not be allowed, for such compensation would be in the nature of a profit to him. If, therefore, interest is to be allowed

to the man who operated on borrowed capital, it must be upon the theory that he is to be treated differently from the man who risked his own money in the enterprise; that claimants who had no capital of their own, but had to borrow, are to be made a favored class. If the provision of the act relating to profits prevents an allowance for interest to the man who used his own money, it applies to all other claimants as well. If Congress had intended to allow interest on borrowed capital undoubtedly it would have provided for interest on invested capital, whether borrowed or not. In prohibiting the payment of interest on invested capital, by including the no profits provision, the payment of interest on borrowed capital was likewise prohibited. It is difficult in law or practice to place the man who has no capital on exact footing with the man who has. The disadvantage of having no capital is recognized in the business world, and the borrowing operator always is compelled to stand the charges which lack of capital entails. Unless it is to be held that interest on capital is not profit, the conclusion is inevitable that the interest loss sustained through the borrowing of capital is the operator's own loss and can not here be compensated.

Would apply to purchase of property

The arguments which ordinarily are used to support the repayment of interest apply with equal force to reimbursement for purchase of property. How, it is asked, could a miner without capital be expected to respond to the appeals of the Government for ore if he did not borrow the money, and, having borrowed it and produced the ore, why is the interest he paid not a legitimate item of expenditure under the act? Might it not as well be asked how a man having no mining property could answer the appeal unless he purchased or leased mining lands, and if he did so purchase or lease lands and thereby produced ore, would the purchase price not be a legitimate expenditure?

But if the Congress had contemplated reimbursement for purchase of property, many more millions than are represented in the war-minerals fund would have been appropriated, and provision would have been made for taking over of title to the property. It is a wrong inference to say that, in issuing appeals for increased production, the Government assumed a moral obligation to supply men with capital, to pay the cost of securing capital, or to take over mining lands at cost to the owners thereof. It is equally erroneous to read into the act a legal direction that expenditures of this character be compensated. When Congress permits the payment of interest by special act it is subject to conditions, such as rate of interest, period of time, etc., none of which conditions appear either in the original or the amended act. At the time the act was amended, last November, Congress and claimants well knew that the act was interpreted by those who were administering it to prohibit repayment for interest. Then was the time the question should have been raised and congressional expression secured. It has been contended before this

writer that the Government, in publicly urging increased production of these ores and not at the same time furnishing or offering to furnish the capital required, thereby assumed the obligation to repay interest charges where borrowing was necessary. Conversely, may it not be said that by not offering to furnish capital the Government gave notice that the matter of capital was the miner's own affair. The argument is further met by the fact that the Government permits the payment of interest through specific legislative action and not through obligations created as described.

16 Financing charges

If, then, the general published appeals for increased production did not relate to the furnishing of capital to those who did not have it, or the payment of interest to those who did, and if the act which followed contains no specific provision for financing charges, the repayment of the latter must find its authority in the wide discretion given the Secretary of the Interior in the administration of the act. There is no legal prohibition of the allowance of a financing charge, and if it were shown that the Government had specifically directed claimant to finance his operations substantially in the manner in which they were financed, the Secretary might, in his discretion, allow any part or all of such expenditure. And in the event of such allowance, it would not mean that a hard and fast rule had been adopted which would make repayable financing charges due alone to general published appeals for increased production, nor would it mean that bonuses or promotion charges which, in fact, were only excessive, usurious interest charges, are to be compensated. It would only mean that in claims where the Government through its agents was a party to the financing, the fact might be taken into consideration by the Secretary in fixing the award.

In this particular case, as is testified, the then Secretary of the Interior personally requested one of the claimants to operate the properties on a big scale, which claimant at first declined to do, unless the Government should underwrite the venture. This, of course, was impossible, and, after some delay, the Secretary, through his personal agent, requested Ashcraft and Wilkinson to use their influence to induce claimant to enlarge his operations, and further, he asked them to assist in financing him. Ashcraft and Wilkinson did so use their influence, and with success, and did finance claimants, for which financing claimant is obligated for a large amount. Claimant contends that the plan adopted was not more expensive than would have been the raising of the money by the sale of bonds, or through any of the other promotion plans which were in use during the war period. This, in substance, is claimant's side of the matter, and he asks that the cost of financing be compensated.

Ashcraft and Wilkinson were prominent in financial affairs. They had made a great deal of money in pyrites dealings because of the war. It is established that they urged claimant to enlarge his enter-

prise, and that they volunteered to secure the money therefor. They may have acted partly in response to the request of the Secretary, partly through patriotic motives, and partly because of the contract which they hoped to make and did make with claimant. Claimant was to pay 6 per cent on the loan to the bank and, in addition, was to pay Ashcraft and Wilkinson from fifty cents to one dollar a ton upon the entire production of the new mill up to 335,000 tons. As it was confidently expected that the new mill would run to its full capacity, they stood to make hundreds of thousands of dollars in the deal. What they really did in consideration of the contract was to assume a risk of loss. If they had merely pointed the way by which the money was secured, without incurring any risk themselves, the
17 contract would be outrageous. But the record shows that while they assumed a risk, they took pains to make the risk as small as possible. They made the contract with the Chestatee Company but in addition to the company's notes required the personal endorsement of the notes by claimants. They took what amounted to a lien upon the property of the claimant company and the ore in the ground. And in order to make the chance for profit as large as possible, claimant was required to make Ashcraft and Wilkinson the exclusive sales agent for the ore, for which they were to be paid a brokerage fee of 25 cents per ton. There were four successive contracts by which the $695,000 was furnished the claimant company, the last being more favorable to Ashcraft and Wilkinson than those which preceded it. It provided for the payment of $250,000 to Ashcraft and Wilkinson for their services in securing a loan of $695,000, and in addition, for a brokerage fee of 25 cents per ton on the ore. This tells the story. It shows that the amount to be paid, not considering the brokerage fee, was more than 35 per cent of the loan—a per cent for financing far above that allowed in the wild-cat schemes with which the country is familiar. To consider the financing charge in comparison with the estimated receipts for ore, as the auditor has done, obviously is not the proper view. The correct way to determine whether or not a financing charge is too high is to compare it with the amount of the loan. If, for instance, the receipts from the sales of ore should amount to $5,000,000, the per cent of the financing charge contained in this contract as compared with the $5,000,000 would be very small, but the fact would still remain that this claimant was to pay Ashcraft and Wilkinson $250,000 for a loan of $695,000. When a man in the ordinary course of business secures a loan, the commission is based upon the amount of the loan and not upon the value of the product which the borrower, as a result of the loan, might place upon the market. Of course, Ashcraft and Wilkinson are not the claimants here, although they will benefit more than will the claimants if an award be made, and whether or not they drove a hard bargain with claimants is not essential except as it bears upon the recognition of this financing contract as an obligation incurred and to be compensated. The real question is:

Was the financing contract such an obligation as should be repaid by the Government in whole or in part?

As to the allowance of the entire amount, there can be no question that it would not be warranted. It would mean payment to Ashcraft and Wilkinson for ore still in the ground, and which probably never will be mined. The unfulfilled part of the contract, if ever it was to be recognized under the act, was invalidated when Ashcraft and Wilkinson, having a lien upon the ore in the ground, consented to its disposal. When they took part in disposing of all the property of the Chestatee Company, and winding up its affairs, they were estopped from holding that company, or the Pratts, liable for the fulfillment of the contract. It is an error to hold that the provision in the act relating to obligations incurred means that any obligation whatsoever must be compensated. The language should be interpreted in connection with the language of the entire act. The obligation must relate to producing or preparing to produce
18 ore, and it must be a reasonable obligation, such as would be incurred by a reasonably prudent man. Moreover, the amount that would be repayable would be the amount for which the creditor could secure judgment in a court. The act contains a few mandatory provisions, the meaning of which can hardly be misconstrued, and the general administration is left to the wise discretion of the Secretary of the Interior for the purpose, undoubtedly, of preventing the payment of ridiculous, unfounded, or unreasonable charges and to give to claimants the amounts to which they are in justice and equity entitled.

In the first award, Secretary Lane allowed $18,112.00 for financing. He reached this amount by the following process: He first found that the per cent of stimulation which should be granted claimant was 56.6. On that basis $320,000 of the loan was considered admissible. He held that 10 per cent would be a reasonable allowance for financing, and, applying the 56.6 per cent of stimulation to 10 per cent of $320,000, the financing allowance was found to be $18,112.00.

I am of the opinion that 10 per cent is a reasonable allowance for financing in this particular claim. The amount of money required to meet the Government demands was so great as to make the securing of it by ordinary means almost impossible. The activities of the Government to induce Ashcraft and Wilkinson to finance claimant, so that war needs might be met quickly and in large measure, were personal, direct, and effective. The fact that Secretary Lane, who himself had a part not only in the stimulation of claimant but, through suggestion, in the financing, recognized that Ashcraft and Wilkinson had performed a service to the Government, is evidence of that service; and while the contract which they had with claimant furnishes no basis for fixing the amount to be allowed, a fair adjustment can be reached by a study of all the event connected with the transaction. Secretary Lane was warranted in making an allowance of 10 per cent, but the application of the 56.6 per cent both as to the

amount of the loan and the 10 per cent itself operates to bring the allowance less than it should be. The total amount of this loan was $695,000. Of this amount $50,000 was used in the period before stimulation. The 10 per cent for financing should apply only to the amount of the loan which went into stimulated operations, namely, $645,000, so that the allowance which is here recommended is $64,500.00.

Salvage

The question of salvage is perplexing in nearly all claims, but here it is unusually complex and difficult. The claimant, when submitting the claim, estimated the usable value of all the property at $200,000, but that was not intended to be an estimate of the salvage value, for it was stated at the time that there was no salvage value, because by the terms of the lease the machinery and equipment, or practically all of it, could not be removed from the property. Claimant, it appears, in offering to accept a deduction of $200,000, did so in
19 the belief that the equipment which they would have used in their own nonstimulated operations, would have cost that amount, and in consenting to such deduction it was on the supposition that there would be no deductions for interest, salaries, etc. It was, in, fact, a settlement proposition. Passing from the conjectural, let us see what was actually realized when this property was disposed of to the Piedmont Corporation. The claimant company had a floating indebtedness of $50,000, which it could not pay and which threatened to force it into bankruptcy. The Piedmont Corporation assumed this debt. The Piedmont Corporation, as a further consideration, transferred to claimant company $150,000 of its preferred stock. The question is, is this stock worth its face value? Claimant asserts that it is worth nothing at the present time, and, in view of the demoralized condition of the business which the Piedmont Corporation was or is to carry on, there are good grounds for the contention. But it is the policy to ascertain the value at the time of the armistice, and, therefore, the claimant's own statement on that point is taken for a basis. The total face issue of the stock was $1,000,000. If this stock represented an actual property value of $200,000, it was worth, as may readily be computed, 20 cents on the dollar, and the value of the $150,000 in stock transferred to the claimant company would be $30,000. I am of the opinion that this plan of ascertaining the deductable value of the stock, is as equitable as any that might be adopted. The items of sales of equipment previously must be added to the foregoing salvage, but they are not in dispute and are set out in the schedule of deductions.

Then comes the equipment which was purchased before stimulation, but used during stimulation, which the auditor presents for consideration in connection with salvage. As a matter of history the auditor states that in the Denison claim, No. 30, the former commission allowed the cost of equipment purchased before stimu-

lation and took no account of salvage, and he thinks that the Chestatee claim is on all fours with the Denison claim. If the auditor is right, the action of the former commission will not be accepted as a precedent to be followed, and the Denison claim, which is still before the commissioner for review, will be adjusted in harmony with the principles that are here being applied to the Chestatee claim. It should be stated in this connection, however, that examiners for the present commissioner regard the two claims as materially dissimilar. The soundness of these diverging views will have judgment when a recommendation as to the Denison claim is made.

The plan of the present commissioner in adjustment of claims where the plant was a going concern at the time of stimulation, and the reasons therefor, may be stated in a few words.

Equipment and machinery purchased before stimulation but used during stimulation, will be given a liberal rental or depreciation credit only. The reason why its purchase price will not be allowed is because the Government was in no wise responsible for its purchase, and the claimant at the moment he purchased the property had incured any loss that might come, and that loss was therefore his own. To allow for its purchase would be in fact to allow for the purchase of property.

20 Supplies which were purchased prior to stimulation and used during stimulation and thereby made completely valueless, such for instance as coal, will be compensated in full.

To hold that when the Government interfered it destroyed claimant's estate and deprived him of probable profits, which should be compensated, as has been suggested, is not sound. First, that would mean an allowance of profits, which is specifically prohibited by the act, and the profits would be merely estimated profits which might never have been realized. Second, the Government only says to claimants that it will reimburse the actual net loss that was sustained for the stimulation period.

In this review it is held that the claimant is fairly entitled to a rental or depreciation allowance of 20 per cent of the machinery and equipment purchased before stimulation but used during stimulation, and the entire purchase price of the supplies which were so used or consumed and deprived of all salvage value. It is understood, of course, that ordinarily there must not be a deduction for salvage on equipment and machinery where rental only is allowed. In this claim the equipment and machinery so rented was a part of the plant as finally sold and salvaged, but that fact was considered when the amount of salvage of the entire property was fixed, and therefore the 20 per cent now mentioned for rental is not subject to increase on account of salvage. The amount of the prestimulation expenditures to which the 20 per cent rental should apply is $132,139.31, which makes an allowance of $26,427.86 for that item. The cost of miscellaneous items in the same period, which should be compensated in full, is $16,901.07.

A subsistence allowance of $4,032 for G. L. and N. P. Pratt was substituted for the salary charge of $25,966.67, which appears in the claim. A straight salary allowance to a partner or part owner of a property would mean the granting of a profit to him. Subsistence is allowable, but if he is to receive compensation above subsistence it must come from profits earned by the corporation or partnership.

The claim as adjusted, according to the foregoing decisions, is as follows:

Expenditure:		
June 18, 1917, to Nov. 11, 1918 agreed upon by the auditor for the Government and the auditor for claimant		$784,791.14
Deductions:		
Ore sales	$82,077.87	
Executive salaries	25,966.67	
Interest	40,795.13	
Taxes	834.76	
Real estate	750.00	
Legal services	585.75	
	151,010.18	
Salvage:		
Salvage for stimulation period on basis of $80,000 from Piedmont Corporation	47,546.73	
Cash received for sundry equipment	7,695.00	
	55,241.73	206,251.91
		578,539.23
21 Add allowances:		
Rents from property included in deductions in operations a/c	2,881.63	
Per diem G. L. and N. P. Pratt, in lieu of salary, 508 days each at $4	4,064.00	
Rental or depreciation on prestimulation plant, etc., 20 per cent of $132,139.31	26,427.86	
Misc. items, tools, material, for water supply, etc., purchased before stimulation but used in the stimulated operations and their value thereby totally destroyed	16,901.07	
Financing contract, 10% of $645,000	64,500.00	
		114,774.56
		693,313.79
Less award heretofore made and paid		223,529.17
Net loss		469,784.62

I am of the opinion that the net loss for which claimant should now be compensated is $469,784.62, and I recommend an additional award of that amount.

In reviewing this claim I have been struck by the magnitude of the expenditures and the possibilities of output. The very bigness of it tended to lead an examiner unconsciously to fail to give claimant full justice, but that I have tried to overcome. If I have seemed to deal with it liberally, it was because the record showed that the then Secretary of the Interior, realizing no doubt that this property presented opportunity for the biggest production of pyrites in the

entire country, used every means in his power to persuade the claimant to develop it. It is true that he could not and did not guarantee claimant against loss, but his full influence short of underwriting the project was exerted. Always, too, there was a realization that claimant, in responding to Government request, will suffer great financial loss, notwithstanding the generous provisions of the war minerals relief act. It would be too much to say that the recommendations contained herein offer a perfectly accurate adjustment, but it is believed that they approach justice and equity as closely as can be expected in view of the complexity of the claim.

(Recommends additional award of $469,784.62.)

(Signed) JOHN BRIAR,
Assistant Commissioner.

EXHIBIT F

THE SECRETARY OF THE INTERIOR,
Washington, September 28, 1922.

The Chestatee Pyrites and Chemical Corporation, Atlanta, Georgia.
Claim No. 1

Additional memorandum by the Secretary, to be attached to the records of the assistant commissioner as part of the record herein.

I have investigated this case and listened with great interest and a large degree of sympathy to the statements made by counsel for the claimants, and to the arguments advanced with reference to the matter of allowing interest upon this claim; additional allowance
22 for services, and an allowance of an increased amount for compensation for the free-stimulation plant.

After full consideration, I am confident that the conclusions reached by the commission are as nearly correct as it is humanely possible to arrive at a just and equitable sum to be awarded in relief. I, therefore, find myself impelled to make the award as recommended, in the sum of four hundred sixty-nine thousand, seven hundred eighty-four dollars and sixty-two cents ($469,784.62).

If the Congress contemplated the payment of interest upon this claim, as has been suggested in argument, then this award, of course, does not preclude remedial action by the Congress of the United States acting directly.

(Signed) ALBERT B. FALL,
Secretary of the Interior.

ABF/C

(Indorsed:) January 19, 1932. Let this amendment be filed. Daniel W. O'Donoghue, Justice.

In Supreme Court of District of Columbia

Amendment to petition

Filed January 19, 1932

* * * * * * *

Petitioner, the United States, on the relation of Chestatee Pyrites & Chemical Corporation, amends its original petition filed herein, and for amendment says:

Add to Paragraph XI thereof, the following:

The salaries herein referred to, is an item of executive salaries set up in the report of Honorable John Briar, assistant commissioner, dated September 22, 1922, and filed herein as Exhibit D to the response of the Secretary of the Interior, which salaries, less a subsistence, were denied. The claim for property taken over as the purchase of property, is based upon the finding of said Briar in said report, wherein he gave the cost of the prestimulated plant as $149,040.38, and out of which allowances were made of $16,901.07; $26,427.86 and $32,453.27; such allowances not being allowed as purchase of property, but as rental, proportion of salvage, and for tools, material, etc., completely used. The remainder of such cost, so found by said assistant commissioner, was disallowed on his statement that "to allow for its purchase would be, in fact, to allow for the purchase of property." The purchase of property otherwise included in this paragraph, refers to what said assistant commissioner calls "real estate, $750.00"; taxes referred to are called by the said assistant commissioner as "taxes" and amount to $834.76. Legal services referred to are described in that language by the commissioner and amount to $585.75.

Wherefore, petitioner prays that this amendment be allowed and that he have the relief as in the original petition prayed.

EDGAR WATKINS,
Attorney for Chestatee Pyrites & Chemical Corporation.

[*Duly sworn to by Edgar Watkins; jurat omitted in printing.*]

23 Service of copy of the foregoing amendment received.

O. H. GRAVES,
Attorney for Ray Lyman Wilbur, as Secretary of the Interior.

In Supreme Court of District of Columbia

Respondent's supplemental answer to paragraph 11 of the petition for mandamus of this cause, as amended

Filed January 27, 1932

* * * * * * *

11. Answering the allegations of the eleventh paragraph of the petition for mandamus in this cause, as amended, the respondent, Ray Lyman Wilbur, as Secretary of the Interior, says:

The respondent denies, as a matter of fact, that the petitioner, Chestatee Pyrites & Chemical Corporation, sustained any loss whatever through the payment of salaries, or through taking over property in the nature of the purchase of property, or in the payment of taxes, or through the payment of legal expenses. The respondent demands strict proof that such losses, as a matter of fact, were sustained.

The respondent denies as a matter of law that the salaries alleged to have been paid by the petitioner, that the property alleged to have been taken over in the nature of purchase of property by the petitioner, that the taxes alleged to have been paid by the petitioner, and that the legal expenses alleged to have been paid by the petitioner, constituted losses sustained by it within the meaning of the act of March 2, 1919, and its amendments.

The respondent denies that he and his predecessors in office erred as a matter of law in not finding that the payments, as aforesaid, were losses allowable under said act of March 2, 1919.

With respect to the report of the Hon. John Briar, a member of the War Minerals Relief Commission, dated September 22, 1922, which is said by the petitioner to have been filed in this cause as Exhibit D to the response of the Secretary of the Interior, the respondent says that the said response of the Secretary of the Interior, together with its exhibits, merely was a response to a rule to show cause which was issued in this case, and that the said response was withdrawn and stricken from the record pursuant to an agreement between
24 the attorney for the petitioner and the attorney for the respondent, dated September 2, 1929, and that the said response no longer is a part of the record in this cause, it having been stricken from the record pursuant to an order of court in this cause dated September 24, 1929.

A copy of the said stipulation of September 2, 1929, is attached hereto and made a part of this amended answer as Exhibit A.

The respondent says that item 2 of the said stipulation contains an agreement that the papers which had been attached to the Secretary's so-called response, as exhibits, might be considered by the court in connection with the case, "with the same effect as though they were originals thereof," and that this item of the stipulation was confirmed by the order of court of September 24, 1929.

The respondent says that the answer in due form which thereafter was filed with petition for mandamus in this cause, and which is now on file therein, did not include and does not include any exhibits whatever; and that this statement has express reference to the aforesaid report of Commissioner John Briar.

The respondent says that the only intent and effect of the stipulation between counsel, dated September 2, 1929, was to make certain uncertified copies of the findings of the Secretary of the Interior, of the War Minerals Relief Commission, and of the Assistant Commissioner of War Minerals including his report dated September 22, 1922, admissible in evidence in the trial of this cause upon its merits

without being authenticated under the seal of the Department of the Interior as otherwise would have been necessary pursuant to section 661, title 28, of the United States Code; and that it was neither contemplated nor understood that such papers thereby became exhibits to the pleadings.

With respect to the item of executive salary "set up in the report of the Hon. John Briar," the respondent says that G. L. Pratt and N. P. Pratt were the sole incorporators and the only stockholders of the Chestatee Corporation, and that they therefore were in a position to distribute to themselves any portion of the corporation's assets which they saw fit, either in the guise of salaries or as dividends. The said G. L. Prat and N. P. Pratt withdrew $25,966.67 of the money of the corporation and distributed it to themselves as salaries, and they thereafter included this amount in the claim filed by the corporation pursuant to the act of March 2, 1919, in the guise of a loss suffered by the corporation in producing pyrites in compliance with the request of the authorized agents of the Government. Such distribution of the corporation's assets to themselves by these two stockholders did not, as a matter of fact, necessarily constitute a loss sustained by the corporation in producing or in preparing to produce pyrites pursuant to the provisions of the war minerals act. The withdrawal and appropriation of the corporation's funds by its two stockholders was not the result of contract or agreement with the corporation. Therefore, the Secretary of the Interior, pursuant to the provisions of section 5 of the war minerals act of March 2, 1919, had exclusive and final jurisdiction to determine what amount of the funds withdrawn by the sole incorporators and stockholders of the corporation, and paid to themselves, should be considered, in justice and equity, as a loss sustained by the corporation in producing or in preparing to produce pyrites.

25 The respondent says that the Secretary of the Interior did hear, consider, and determine that question, and that he found as a matter of fact that the Pratts were entitled to receive the sum of $4,032 in compensation for their services to the corporation, and that they were not in justice and equity entitled to receive any further amount. This was the determination of a matter of fact by the Secretary of the Interior, and by the terms of section 1 of the act of February 13, 1929, pursuant to which this action was brought, and by the terms of section 5 of the war minerals act of March 2, 1919, the Secretary's said decision was and now is conclusive, and it is not subject to review in any court; and in this respect it is immaterial whether the allowance made to the Pratts and treated as a loss to the corporation, was designated as an allowance to them or as a salary charge. The Secretary of the Interior, after hearing and consideration, already has determined as a matter of fact that the allowance which in justice and equity should be made to the Chestatee Corporation as a loss sustained in producing pyrites, on account of the compensation due to its officers for their services,

amounted to $4,032. Therefore, the courts now have no jurisdiction or power to require the Secretary to reconsider that question.

With respect to the item designated as "the claim for property taken over as the purchase of property," the respondent says that the facts with respect to this item are as follows:

The Chestatee Pyrites & Chemical Corporation was incorporated on July 24, 1917, by G. L. Pratt and N. P. Pratt, who thereupon became its sole and only stockholders.

Prior to July 24, 1917, and prior to any stimulation to produce under the war minerals act of March 2, 1919, the Pratts had acquired certain equipment and machinery at a cost of $132,139.31, and they also had acquired certain tools and miscellaneous items at a cost of $16,901.07.

Thereafter, and subsequent to stimulation, the Pratts turned over all of this aforesaid property to the Chestatee Corporation in return, as respondent understands and believes, for the stock in that corporation which they had issued to themselves, and in part consideration of a so-called agreement which they, themselves, made on behalf of the corporation, as its incorporators and sole stockholders, whereby the corporation assumed such portion of the indebtedness, which they, themselves, had incurred prior to stimulation through the purchase of the said machinery, equipment, tools, and miscellaneous items as then remained unpaid.

The respondent says that it was impossible for the Pratts, through the method stated, to convert money paid and indebtedness incurred by them prior to stimulation, into payments and indebtedness incurred under stimulation, or to bring such payments and indebtedness, or the property acquired through such payment and indebtedness, within the terms of the war minerals act of March 2, 1919.

In adjusting the claim of the Chestatee Corporation the War Minerals Relief Commission, speaking through Assistant Commissioner Briar in his decision of September 22, 1922, held that the equipment and machinery of the Chestatee Corporation which was purchased by its incorporators before stimplation would be allowed a liberal rental or depreciation credit in favor of the claimant
26 in adjusting its claim, but that the purchase price of the equipment and machinery so purchased would not be treated as a loss to the claimant for the reason that the equipment and machinery had not been acquired pursuant to any stimulation to produce a war mineral by an authorized agent of the Government. The commissioner said, in substance, that to allow for the purchase price of such property would be in fact to allow for the purchase price of equipment and machinery acquired prior to stimulation.

In adjusting the war minerals claim of the Chestatee Corporation, the War Minerals Relief Commission declared, in Commissioner Briar's said decision, that the Chestatee Corporation was fairly entitled to a "rental or depreciation allowance" of 20 per cent of the value of the machinery and equipment purchased by its incorporators prior to stimulation to produce by an authorized agent of

the Government but used by it subsequent to stimulation in the production of a war mineral.

The commission also declared that the entire purchase price of supplies which were used or consumed in the production of a war mineral, subsequent to stimulation, would be allowed for, as such supplies would have no salvage value. This applied to tools and miscellaneous items.

The commission also said that ordinarily there would be no deduction made on account of the salvage value of machinery for which rental was allowed.

From an audit of the claimant's accounts and from an examination of the facts in the case, the War Minerals Relief Commission determined, as a matter of fact, that the Chestatee Corporation owned the equipment and machinery, which also was referred to as "property," which had cost its incorporators $132,139.31, as aforesaid, and that in adjusting its war minerals claim the corporation was entitled to an allowance of 20 per cent of the cost of such property, or $26,427.86, as rental for the same subsequent to stimulation.

The War Minerals Relief Commission also found that tools and miscellaneous items, which were owned at the date of stimulation, had cost $16,901.07, and that such tools and miscellaneous items had either lost all salvage value or had been destroyed through use in the stimulated operations of the Chestatee Corporation, and that therefore this item of the corporation's claim was allowable in full.

The items of $132,139.31 and $16,901.07, give the total of $149,040.38, which is referred to in amended paragraph 11 of the petition, and which is designated therein as "the cost of the prestimulated plant."

The relator, in the said amended paragraph 11 of its petition, admitted that $32,453.27 additional, of the item of $132,139.31, also had been allowed to it, thus making a total allowance of $58,481.13 on account of the cost of the petitioner's plant as it existed at the date of stimulation; leaving a balance of $73,658.18 disallowed, of the items included in the petitioner's war minerals claim which had cost its incorporators a total of $149,040.38 prior to stimulation.

This balance of $73,658.18 was disallowed by the War Minerals Relief Commission, and afterwards by the Secretary of the
27 Interior, because it represented the balance of the cost of the claimant's plant and equipment which the Secretary determined, as a matter of fact, had been purchased by the claimant's incorporators prior to the date of stimulation fixed by the act of March 2, 1919, and which, therefore, was outside of the scope of the said war minerals act.

The statement of Assistant Commissioner Briar, referred to by the relator, that "to allow for its purchase would be in fact to allow for the purchase of property," had reference to "equipment and

machinery purchased before stimulation" as is clearly shown by the context.

With respect to the item of $750 claimed as a loss sustained by the Chestatee Corporation in producing or in preparing to produce pyrites, the respondent says that this item of relator's war mineral claim already has been fully examined, considered, and determined by the Secretary of the Interior.

The respondent says that the testimony, evidence, reports, and exhibits, submitted in connection with the relator's war minerals claim disclosed that the relator had required timber for use in connection with its mining operations, and that instead of purchasing such timber it had purchased a tract of nonmineral timber land at a cost of $1,590, and thereafter had removed the growing timber from the land.

The relator estimated the value of the timber removed at $840, and an award of that amount was made to it on account of the same. The relator claimed that the balance of the purchase price of the timber land, amounting to $750, also should be considered as a loss sustained by it in producing and preparing to produce pyrites, although the land in question was not mineral land, and although the relator continued to retain title to the same.

The Secretary thereupon determined as a matter of fact that the land itself had not been employed in producing or in preparing to produce pyrites, and he determined that the money expended for the fee simple title to the land itself as distinct from the timber thereon, did not constitute a loss sustained within the meaning of the war minerals act.

With respect to the item of $834.76 designated as taxes, the respondent says that there was nothing in the testimony, evidence, or reports submitted in connection with the relator's war minerals claim to show, as a matter of fact, that these taxes had been assessed and levied by reason of the relator's producing or preparing to produce pyrites pursuant to governmental stimulation, or to show that the taxes were anything more than the usual taxes assessed by the State of Georgia or its political subdivisions upon property within its borders.

The Secretary of the Interior determined, therefore, as a matter of fact that the amount of the taxes in question had not been lost to the relator by reason of producing or preparing to produce pyrites.

The Secretary of the Interior also found, as a matter of law, that taxes assessed by a State, or one of its political subdivisions, against property within its borders was a matter separate and distinct from the production or the preparation to produce a war mineral under the terms of the act of March 2, 1919, and its amendments. The Secretary found that such taxes were due and payable by
28 citizens of the State irrespective of any request to produce a designated mineral by an agency of the United States, and that such taxes were due and payable irrespective of the nature or outcome of any business venture entered into by the taxpayer.

The Secretary also found that the payment of such taxes did not constitute a loss to a war minerals claimant sustained by it in producing or in preparing to produce a war mineral. He found that the payment of such taxes was the discharge of the duty of citizenship due from the taxpayer to the State, and that it was paid in return for the protection which the taxpayer received from the State, and that the payment therefore was quid pro quo.

The Secretary also found that to refund to the relator, from the money of the United States, the amount of the taxes which the relator had paid to the State of Georgia, would be equivalent to the payment of a State tax by the Federal Government, and that there was no authority under any law of the United States for such a payment, and that there was no reason to believe that Congress in enacting the war minerals relief legislation intended that such payments should be made.

For all the reasons stated, both of fact and of law, the Secretary of the Interior refused to refund to the relator the amount of the State taxes said to have been paid by it.

With respect to item of $585.75 designated as the amount paid for legal services, the Secretary of the Interior found as a matter of fact that legal services said to have been rendered to the relator, and for which this payment was said to have been made, in no way involved the production or the preparation to produce a war mineral. The Secretary found as a matter of fact that the payment in question was made as the result of legal services rendered to the relator by attorneys, pursuant to the relation of the attorney and client, and that such services in no way contributed to the production of pyrites or any other war mineral, and that money paid to the attorneys as compensation for their services had not been lost, as a matter of fact, in producing or in preparing to produce pyrites.

The Secretary also found that the services rendered by the attorneys conferred a continuing benefit upon the relator, and that their value was not lost to it in producing or in preparing to produce pyrites.

The respondent says further that all of the items of claim set forth in the said amended paragraph 11, heretofore have been fully and repeatedly examined, considered, and determined by the various Secretaries of the Interior, in the light of testimony taken, of auditors' reports, of reports and recommendations by the War Minerals Relief Commission, and of briefs and arguments by counsel.

The respondent says that on August 8, 1919, after full hearing and consideration, the then Secretary of the Interior, the Hon. Franklin K. Lane, made an award to the relator of $219,607.90; that after further hearing and consideration Secretary Lane increased the amount of his said award to $223,529.17; and that after still further hearing and consideration, the Hon. Albert B. Fall, the then Secretary of the Interior, made an additional award to the relator of $469,784.62, and that the awards so made all were paid to the relator.

29 The respondent says that in arriving at the amounts awarded and paid to the relator, as aforesaid, all of the items included in amended paragraph 11 of the petition in this case were carefully considered and determined, and that to now require the Secretary of the Interior to again consider such items would be to impose an unreasonable burden upon the Secretary, and a useless expense upon the United States Government.

RAY LYMAN WILBUR,
Secretary of the Interior.
E. C. FINNEY,
VICTOR H. WALLACE,
O. H. GRAVES,
Attorneys for Respondent.

[Duly sworn to by Ray Lyman Wilbur; jurat omitted in printing.]

Exhibit A to supplemental answer

In Supreme Court of the District of Columbia

At Law No. 76364

THE UNITED STATES OF AMERICA EX REL. CHESTATEE PYRITES AND Chemical Corporation

v.

RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR. ADDRESS OF RAY Lyman Wilbur, Interior Building, 18th and F Streets NW., Washington, D. C.

Stipulation

It is hereby stipulated and agreed by and between counsel for petitioner and counsel for respondent—

(1) That the response heretofore filed herein be withdrawn and stricken from the record.

(2) That the uncertified copies of the findings of the Secretary of the Interior and the War Minerals Relief Commission and the Assistant Commissioner of War Minerals, attached hereto, may be considered by the court in connection with this case, with the same effect as though they were the originals thereof.

(3) That the respondent be permitted to file and serve an answer in lieu of said response, and the demurrer to the response now on file, be considered a demurrer to such answer.

30 (4) That this case remain in statu quo upon the docket of this court until further order of the court.

Dated September 2, 1929.

EDGAR WATKINS,
Attorney for Petitioner.
O. H. GRAVES,
Attorney for Respondent.

In Supreme Court of District of Columbia

Judgment

Filed February 11, 1932

* * * * * * *

This cause coming on to be heard upon petition as amended and answer thereto as amended together with Exhibits A, B, C, D, and E to said answer, and the demurrer filed herein on March 15, 1929; (taken and considered as a demurrer to the answer as amended) it is, by the court, considered and adjudged that a writ of mandamus do issue out of and under the seal of this court, directed to Ray Lyman Wilbur, as Secretary of the Interior, commanding him to proceed with the final adjustment of the relator's claim filed pursuant to section 5 of the act of Congress of March 2, 1919, chapter 94, as to a balance of $73,658.18 heretofore disallowed in the adjustment of an item of the claim covering the cost of machinery and equipment of a plant taken over by relator after stimulation, and as to an item of $750 expended for real estate, and as to an item of $834.76 paid for taxes, and as to an item of $585.75 paid for legal services, and as to an item of $25,966.67 paid as salaries to the relator's executive officers, and finally to adjust those items of the claim as items allowable under the said act of March 2, 1919, in accordance with the amounts due as determined by him.

This February 11, 1932.

No costs are adjudged against either party.

DANIEL W. O'DONOGHUE,
Justice.

FEB. 11, 1932.

Appeal noted in open court by the defendant.

DANIEL W. O'DONOGHUE,
Justice.

In Supreme Court of District of Columbia

Assignment of errors

Filed February 20, 1932

* * * * * * *

Comes now the respondent, Ray Lyman Wilbur, Secretary of the Interior, and assigns the following errors in the action and judgment of the Supreme Court of the District of Columbia in this cause, to wit:

The court erred—

1. In rendering judgment for the relator, the Chestatee Pyrites and Chemical Corporation, and against the respondent, Ray Lyman Wilbur, as Secretary of the Interior.

31 2. In adjudging, with respect to the item of $73,658.18 which is involved in this action, that property, rights, and obligations acquired or incurred by the incorporators of the Chestatee Corporation prior to stimulation by any authorized agency of the United States Government, thereafter were brought within the scope of the war minerals act of March 2, 1919, through their transfer to the corporation by its incorporators.

3. In adjudging, with respect to the item of $750 which is involved in this action, that the portion of the cost of nonmineral timber land, purchased to supply timber for the mining operations of the Chestatee Corporation, which was allocated by the Chestatee Corporation to the land itself, was within the scope of the said war minerals act.

4. In adjudging, with respect to the item of $834.76 which is involved in this action, that the amount of taxes paid by the Chestatee Corporation represents a loss sustained in producing or in preparing to produce a war mineral, and that it, therefore, is compensable under the war minerals act.

5. In adjudging, with respect to the item of $585.75 which is involved in this action, that money paid by Chestatee Corporation for legal services constitutes a compensable loss to the corporation within the meaning and scope of the war minerals act.

6. In adjudging, with respect to the item of $25,966.67 which is involved in this action, that the money of the Chestatee Corporation which was appropriated by its incorporators and paid to themselves as salaries, represented a compensable loss to the corporation within the meaning and scope of the war minerals act, and that it must be treated and considered as such by the respondent in the adjustment of the corporation's war minerals claim.

7. In not adjudging, with respect to the said item of $25,966.67, that the amount of compensation to the officers of the Chestatee Corporation for their services, which should be considered and allowed as a compensable loss to the corporation under the war minerals act, involved a question of fact for the sole determination of the Secretary of the Interior, and that his determination of the amount so to be allowed, and of the ground for its allowance, whether as salaries or as compensation for services, was final and conclusive and not subject to review by the court.

8. In adjudging, that any of the aforesaid items represents a loss which is compensable under the war minerals act of March 2, 1919, and in adjudging that the respondent shall finally adjust any of such items as a loss sustained in producing or in preparing to produce pyrites, within the meaning of that act.

O. H. GRAVES,
VICTOR H. WALLACE.
Attorneys for the Respondent, Ray Lyman Wilbur.

In Supreme Court of District of Columbia

Designation of the record

Filed February 20, 1932

* * * * * * *

Comes now the respondent, Ray Lyman Wilbur, by his counsel of record, and designates the parts of the record which he desires
32 to have included in the transcript, said parts being considered sufficient for the determination of the questions raised on appeal, namely:

1. The petition for mandamus.
2. Memorandum. Ray Lyman Wilbur, as Secretary of the Interior, substituted as respondent in the place and stead of Roy O. West.
3. The answer to the petition.
4. The relator's demurrer to the respondent's answer.
5. Relator's amendment to its original petition.
6. Respondent's supplemental answer to the amended petition.
7. Exhibits A, B, C, D, and E.
8. Judgment of the court, with notation of appeal.
9. Assignment of errors.
10. This designation of the record.

O. H. GRAVES,
Attorney for the Respondent.

Copy of the foregoing designation of the record was mailed this 19 day of February, 1932, to Edgar Watkins, Esq., attorney for the relator, at his address of record, Atlanta Trust Building, Atlanta, Georgia.

O. H. GRAVES,
Attorney for the Respondent.

In Supreme Court of District of Columbia

Additional designation of record

Filed February 27, 1932

* * * * * * *

To the clerk of said court:

Chestatee Pyrites & Chemical Corporation, relator, requests that the following portions of the record in the above-entitled cause be incorporated into the transcript of record on appeal to the Court of Appeals of the District of Columbia, in addition to those portions of the record designated in the præcipe heretofore filed herein by the appellant, Ray Lyman Wilbur:

I

Following paragraph 2 of appellant's designation of the record, add:

The response filed by said Ray Lyman Wilbur, the stipulation that such response should be withdrawn and stricken from the record and the order of the court entered September 24, 1929, approving such stipulation.

II

Add, to Number 7 of appellant's designation of the record, the following:

Stipulation of the parties hereto agreeing to use Exhibits A, B, C, D, and E, such stipulation being attached to said exhibits.

33 III

This designation of original parts of record.

EDGAR WATKINS,
Attorney for Chestatee Pyrites & Chemical Corporation.

Service is accepted of the above and foregoing designation of additional parts of record and a receipt of a copy thereof is acknowledged. This 24 day of February, 1932.

O. H. GRAVES,
Attorney for Ray Lyman Wilbur.

Supreme Court of the District of Columbia

[Clerk's certificate to foregoing transcript omitted in printing.]

34 [Minute entry of argument and submission, May 3, 1932, omitted in printing.]

35 In Court of Appeals of the District of Columbia

No. 5639

RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR, APPELLANT

v.

THE UNITED STATES OF AMERICA, EX REL. CHESTATEE PYRITES & Chemical Corporation

Appeal from the Supreme Court of the District of Columbia

Argued May 3, 1932. Decided June 6, 1932

Victor H. Wallace, of Washington, D. C., for appellant.
Edgar Watkins and Marion Smith, of Atlanta, Ga., for appellee.

Before Martin, Chief Justice; Robb, Van Orsdel, Hitz, and Groner, Associate Justices.

Opinion

VAN ORSDEL, Associate Justice: Appellee corporation filed a petition in the Supreme Court of the District of Columbia for a writ

of mandamus to compel the Secretary of the Interior to adjust certain of its claims alleged to be allowable under what is known as the war minerals relief act. From an order granting the writ this appeal was taken.

The question here involved is whether or not under the acts of October 5, 1918, 40 Stat. 1009; of March 2, 1919, 40 Stat. 1272, 1274; and of November 23, 1921, 42 Stat. 322, net losses incurred for the purchase of property prior to the stimulation period, under the act of March 2, 1919, and purchased by the relator during the period and expenditures for taxes, legal services, and salaries of executive officers during the stimulation period, are items of net loss which the Secretary of the Interior is required by law to consider in adjudicating an award to claimants.

Under the act of Congress of February 13, 1929, 45 Stat. 1166, jurisdiction was conferred upon the Supreme Court of the District of Columbia to review the decision of the Secretary on questions of law which had arisen, or might thereafter arise, in the adjustment of claims under the 1919 act, leaving, however, the decision of the Secretary on questions of fact conclusive. Wilbur v. United States Ex. Rel. Vindicator Consolidated Gold Mining Company, 284 U. S. 231.

36 Considering the right of plaintiff to recover for loss sustained by reason of the purchase of real estate where the title still remains in the plaintiff, the court in the Vindicator case said: "The petitioner argues that the phrase 'such net losses as have been suffered' excludes claims where, at the time of the enactment, the purchaser still retained title to the property. But the net losses mentioned are not thus limited. Losses by reason of expenditures for property, real or personal, still owned by claimants are not excepted. The purpose is merely to reimburse; loss resulting from speculative investments is excluded; allowance of profits is forbidden. In determining actual net loss the value of the property purchased and retained by claimant is necessarily to be taken into account. The construction for which petitioner contends necessarily rests upon the hypothesis that one may not suffer loss by reason of expenditures for land while he continues to own it. No such assumption can be entertained, for it is everywhere known that the contrary is true, and that the value of lands and plants purchased and constructed to produce minerals and other things needed wholly or principally to carry on the war was liable to, and in fact generally did, greatly and permanently decline when the struggle ended."

It was likewise held in the Vindicator case that interest paid on borrowed money which was lost in the enterprise was a loss for which compensation should be awarded. We are unable to distinguish this holding from a case where money was paid for legal services necessarily expended in connection with carrying on the enterprise, or for money paid for executive salaries in connection with the administration work necessary in the management of the enterprise.

Coming to the remaining item as to loss sustained in payment of taxes, we are of the opinion that this item should be considered by the Secretary in determining the net loss sustained by the plaintiff corporation. It does not, however, necessarily mean that the entire tax paid upon the property may be recovered as a net loss; but the difference between the tax paid on property embraced in this governmental enterprise prior to the stimulation period and the tax paid during that period on the same property, as well as the tax on additional property procured as a result of the requirement of the Government that plaintiff company should embark in this enterprise, are to be treated as proper items in the determination of net loss.

The judgment is affirmed.

JOSIAH A. VAN ORSDEL,
Associate Justice.

A true copy.
Teste:

_____ _____,
Clerk, Court of Appeals, D. C.

37 In Court of Appeals of District of Columbia

April Term 1932

No. 5639

RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR, APPELLANT

vs.

THE UNITED STATES OF AMERICA EX REL.

CHESTATEE PYRITES & CHEMICAL CORPORATION

Judgment

June 6, 1932

Appeal from the Supreme Court of the District of Columbia. This cause came to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said Supreme Court, in this cause, be and the same is hereby, affirmed.

Per MR. JUSTICE VAN ORSDEL.

38 In Court of Appeals of the District of Columbia

[Title omitted.]

Præcipe for transcript of record

Filed July 7, 1932

The clerk will please prepare a transcript on application for certiorari to the Supreme Court of the United States in the above entitled cause, including therein the following:

(1) The printed record in the Court of Appeals.
(2) Minute entry showing argument of cause.
(3) Opinion of the court.
(4) The judgment of the court.
(5) This designation.
(6) Clerk's certificate.

O. H. GRAVES,
VICTOR H. WALLACE,
Attorneys for Ray Lyman Wilbur,
Secretary of the Interior.

39 [File endorsement omitted.]

40 [Clerk's certificate to foregoing transcript omitted in printing.]

41 Supreme Court of the United States

Order allowing certiorari

Filed October 17, 1932

The petition herein for a writ of certiorari to the Court of Appeals of the District of Columbia is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[Indorsement on cover:] File No. 37032. District of Columbia Court of Appeals. Term No. 335. Ray Lyman Wilbur, Secretary of the Interior, petitioner, vs. The United States of America ex rel. Chestatee Pyrites & Chemical Corporation. Petition for writ of certiorari and exhibit thereto. Filed August 31, 1932. File No. 37032.

U. S. GOVERNMENT PRINTING OFFICE: 1932

FILE COPY

Office Supreme Court
AUG 31
CHARLES ELMORE

No. 335

In the Supreme Court of the United States

OCTOBER TERM, 1932

RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR, PETITIONER

v.

THE UNITED STATES OF AMERICA EX REL. CHESTATEE PYRITES & CHEMICAL CORPORATION

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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CITATIONS

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In the Supreme Court of the United States

OCTOBER TERM, 1932

No. ——

RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR, petitioner

v.

THE UNITED STATES OF AMERICA EX REL. CHESTATEE PYRITES & CHEMICAL CORPORATION

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

The Solicitor General, on behalf of the Secretary of the Interior, prays that a writ of certiorari issue to review the judgment of the Court of Appeals of the District of Columbia, entered in the above-entitled cause on June 6, 1932 (R. 36), affirming a judgment of the Supreme Court of the District of Columbia awarding a writ of mandamus against the Secretary of the Interior.

OPINIONS BELOW

No opinion was rendered by the Supreme Court of the District of Columbia. The opinion of the

Court of Appeals of the District of Columbia (R. 34) has not yet been reported.

JURISDICTION

The judgment of the Court of Appeals of the District of Columbia was entered June 6, 1932. (R. 36.) The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the Secretary of the Interior erred, as a matter of law, in refusing to allow the items of respondent's claim under the War Minerals Relief Act of March 2, 1919, as amended, representing cost of certain machinery and plant equipment, salaries paid to corporate officers who were the sole stockholders of respondent corporation, and an amount paid for legal services which did not involve or contribute to the production of a war mineral.

STATUTES INVOLVED

These appear in the Appendix, *infra,* pp. 12–17.

STATEMENT

Pursuant to Section 5 of the Act of March 2, 1919, as amended, commonly known as the War Minerals Relief Act, the respondent filed a claim with the Secretary of the Interior for losses alleged to have been sustained in producing and in preparing to produce pyrites under the conditions

specified in that Act. (R. 2, 7.) Thereafter awards totaling $693,313.79 were allowed and paid to respondent, but various items of its claim were disallowed by the Secretary. (R. 28.)

Within the time limited by the Act of February 13, 1929 (*infra*, p. 16), respondent filed in the Supreme Court of the District of Columbia a petition for a writ of mandamus, seeking a review of the Secretary's final decision on questions of law arising in connection with his disallowance of certain items of respondent's claim. (R. 1–4, 22.)[1]

The case was submitted upon respondent's demurrer to petitioner's answer and supplemental answer, which fully set forth the facts. (R. 5, 6, 23, 30.) The trial court sustained the demurrer and ordered that a writ of mandamus issue directing the Secretary of the Interior to proceed with the final adjustment of the disputed items of respondent's claim, and "finally to adjust those items of the claim as items allowable under the * * * act of March 2, 1919, in accordance with the amounts due as determined by him." (R. 30.)

Upon an appeal to the Court of Appeals of the District of Columbia by the Secretary of the Interior, the judgment of the lower court was affirmed. (R. 34–36.)

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[1] The disallowance by the Secretary of the Interior of an item of interest included in respondent's claim was under consideration in *Work* v. *Chestatee Co.*, 267 U. S. 185, and *Wilbur* v. *Chestatee Corp.*, 284 U. S. 231, 237.

In this petition the Secretary is contesting the action of the courts below in respect of only three of the items in dispute in those courts. The pertinent facts with reference to these three items are set forth in the Secretary's answer and supplemental answer as follows:

(1) *Cost of Machinery and Plant Equipment.*—Respondent, the Chestatee Corporation, was incorporated on July 24, 1917, under the laws of Georgia, by G. L. Pratt and N. P. Pratt, who became its sole stockholders. (R. 25.) Prior to any request to produce a war mineral by an authorized agent of the Government, the Pratts had acquired certain equipment and machinery at a cost of $132,139.31, and had acquired certain tools and miscellaneous items at a cost of $16,901.07. (R. 20, 25.)

Subsequent to a request to produce by an agent of the Government, the Pratts turned over all of this property to respondent. (R. 25.)

In adjusting respondent's war minerals claim, the Secretary of the Interior allowed and paid the item of $16,901.07 in full, because it represented the value of articles which had been entirely lost through use in respondent's mining operations. (R. 20, 26.) He also allowed and paid, as a fair rental value, $58,481.13 on account of the use in the business of the corporation of the equipment and machinery, but he disallowed $73,658.18 representing the balance of the cost of the equipment and machinery. (R. 26.)

(2) *Salaries.*—The Pratts withdrew from the moneys of the corporation and distributed to themselves as salaries $25,966.67. They included this amount in the war-minerals claim filed by them and the corporation jointly as a loss sustained by the corporation in producing pyrites. (R. 9, 24–25.)

It appears from the record that so far as claimants who are individual owners or partners are concerned, the Secretary has taken the position that he is not bound to award whatever compensation the claimant sees fit to pay himself, and that it is his duty under the statute to make only such payment as he may deem just and equitable. He accordingly established a rate of $4 a day in such cases as a fair allowance for services upon the ground that the allowance of a greater sum might result in the awarding of profits. He followed the same practice in the instant case because of the Pratts' complete ownership of the respondent corporation, and allowed the corporation a total of $4,032 on account of the services of the Pratts. (R. 20–21.) He alleges that he determined, as a matter of fact, after due consideration, that this is all that the corporation, in justice and equity, was entitled to. (R. 25.)

(3) *Legal services.*—The Secretary disallowed an item of $585.75 paid by respondent for legal services, finding, as a matter of fact, that these services did not involve or contribute to the production of pyrites or any other war mineral. (R. 28.)

SPECIFICATION OF ERRORS TO BE URGED

The court below erred—

1. In directing the Secretary of the Interior to adjust as an item allowable under the Act of March 2, 1919, as amended, the cost of machinery and plant equipment which was acquired without request, demand, or other stimulation by any Government agency or officer, by persons who subsequent to April 6, 1917, and prior to November 12, 1918, organized and became the sole stockholders and incorporators of the respondent corporation and transferred to it the machinery and equipment in question upon the assumption by the respondent corporation of their obligation to pay for the property.

2. In directing the Secretary to adjust as an item allowable under the Act of March 2, 1919, as amended, salaries which the two incorporators, officers, and sole stockholders of the respondent corporation distributed to themselves from the funds of the respondent, even though the Secretary already had allowed and paid respondent corporation the amount which he had determined, as a matter of fact, was in justice and equity due it on account of the value of the services of the two stockholders.

3. In directing the Secretary to adjust as an item allowable under the Act of March 2, 1919, as amended, an amount paid by respondent for legal services which the Secretary found, as a matter

of fact, did not involve or contribute to the production of a war mineral.

4. In affirming the judgment against the Secretary entered by the Supreme Court of the District of Columbia.

REASONS FOR GRANTING THE WRIT

1. In requiring the Secretary to adjust the balance of the cost of machinery and plant equipment as an allowable item, the court below not only erred but completely ignored the real question presented by the pleadings. In its opinion it made no distinction between stimulated and nonstimulated transactions, but disposed of the issue by a reference to the decision of this Court in *Wilbur* v. *Vindicator, etc., Co.*, 284 U. S. 231, which patently is without bearing. The court, therefore, gave an improper effect to that decision.

The Pratts acquired the equipment and machinery in question before any request to produce a war mineral had been made of them by one of the Governmental agencies specified in Section 5 of the Act of March 2, 1919 (*infra*, p. 12), viz., prior to stimulation. Their purchase of the equipment and machinery was therefore a matter entirely outside of the scope of that Act. It was nothing more than an ordinary business transaction by the Pratts.

Thereafter, when a request to produce pyrites was made of the Pratts by an authorized agent of the Government, they could not alter the existing

status of their equipment and machinery by incorporating the Chestatee Pyrites & Chemical Corporation in which they became the sole stockholders and only officers, and then turning over the equipment and machinery to the corporation.

The War Minerals Relief Act deals with matters of fact and not with fictions of law, and for the purposes of an award under that Act the Chestatee Corporation had no better or different status with respect to a prestimulated transaction than its incorporators, who were its only stockholders, had, and it could acquire no higher rights under that Act than those which its incorporators were able to transfer to it.

Had the Pratts retained the equipment and machinery in question and proceeded to produce pyrites in their own names pursuant to a request of the Government's agent, they could have made no claim for loss on account of the purchase of the equipment and machinery, as such purchase was outside of the scope of the War Minerals Relief Act. All they could have claimed would have been the value of the use of the equipment and machinery when employed in producing pyrites. This the Secretary determined and allowed.

The question here is, then, whether the Pratts could place themselves in a better position than other claimants who owned equipment and machinery at the date of the Government's request to produce, by forming a close corporation composed of

themselves alone as stockholders, and then turning over their equipment and machinery to the corporation subsequent to the Government's request.

The Secretary of the Interior held that they could not do so, and that all that the Chestatee Corporation, as the *alter ego* of the Pratts, was in justice and equity entitled to receive on account of the equipment and machinery in question, was the fair value of its use, which the Secretary found as a matter of fact amounted to $58,481.13. That amount he allowed and paid to the Chestatee Corporation as a loss sustained by it in producing pyrites within the scope of the Act.

We believe that the Secretary's action was not erroneous, that the *Vindicator* decision has no bearing on the question presented, and that the question is one which merits consideration by this Court.

2. Despite the fact that the Secretary awarded to the respondent corporation on account of the services of the Pratts the amount which, after due consideration, he considered the corporation was in justice and equity entitled to receive, the decision below compels him again to consider the item, the court holding, in reliance upon the *Vindicator* decision, that the item is in the same category as interest paid on borrowed money.

In so holding, the court below evidently misunderstood the question at issue. This is not a case where the salary paid to an officer of a corporation was fixed pursuant to a *bona fide* contract of em-

ployment, and where the officer himself was unable to dictate the amount of his own compensation. Where officers, whose compensation is in question, own and control a corporation, the Secretary, in determining the loss suffered by the corporation through its operations in producing a war mineral, should undoubtedly consider and adjust the amount of the salaries the officers have fixed for themselves and make an equitable and just allowance for their services. But here the Pratts, in reliance upon the corporate fiction, are endeavoring to compel the Secretary to repay them indirectly, as the sole stockholders of their corporation, an arbitrary amount which they distributed to themselves, claiming that the corporation lost that amount in producing pyrites. The Secretary, in the exercise of statutory power to adjust the claim, has determined that in justice and equity the amount which should be allowed the corporation on account of the value of the Pratts' services and which should be considered as a loss sustained by the corporation in producing pyrites is $4,032. This was a finding of fact by the Secretary, and the exercise of his judgment and discretion in that respect may not, we submit, be controlled by mandamus, there being no showing that it was arbitrary or capricious.

We are advised that questions involving the Secretary's disallowance of salaries are presented in a number of suits now pending in the Supreme Court

of the District of Columbia, and that in one of these suits the precise question here presented is involved.

3. In holding that the Secretary was required to adjust the item of legal expenses as an allowable loss, the court below has failed to take into consideration the finding of fact of the Secretary that these services did not involve or contribute to the production of pyrites or any other war mineral. (R. 28.) The *Vindicator* decision, to which the court below refers in its opinion (R. 35), expressly recognizes that a loss to be allowable under the statute must be incurred in producing or preparing to produce a war mineral. (284 U. S. 238.)

A similar question, we are advised, is presented in 53 cases pending in the Supreme Court of the District of Columbia.

4. The questions presented involve the interpretation of an Act of Congress, the War Minerals Relief Act.

CONCLUSION

Wherefore, it is respectfully submitted that this petition should be granted.

THOMAS D. THACHER,
Solicitor General.

AUGUST, 1932.

APPENDIX

STATUTES INVOLVED

Act of March 2, 1919, known as the War Minerals Relief Act, c. 94, 40 Stat. 1272, 1274:

> SEC. 5. That the Secretary of the Interior be, and he hereby is, authorized to adjust, liquidate, and pay such net losses as have been suffered by any person, firm, or corporation, by reason of producing or preparing to produce, either manganese, chrome, pyrites, or tungsten in compliance with the request or demand of the Department of the Interior, the War Industries Board, the War Trade Board, the Shipping Board, or the Emergency Fleet Corporation to supply the urgent needs of the Nation in the prosecution of the war; said minerals being enumerated in the Act of Congress approved October fifth, nineteen hundred and eighteen, entitled "An Act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of those ores, metals, and minerals which have formerly been largely imported, or of which there is or may be an inadequate supply."
>
> The said Secretary shall make such adjustments and payments in each case as he shall determine to be just and equitable; that the decision of said Secretary shall be conclusive and final, subject to the limitation hereinafter provided; that all payments and expenses incurred by said Secretary, in-

cluding personal services, traveling and subsistence expenses, supplies, postage, printing, and all other expenses incident to the proper prosecution of this work, both in the District of Columbia and elsewhere, as the Secretary of the Interior may deem essential and proper, shall be paid from the funds appropriated by the said Act of October fifth, nineteen hundred and eighteen, and that said funds and appropriations shall continue to be available for said purpose until such time as the said Secretary shall have fully exercised the authority herein granted and performed and completed the duties hereby provided and imposed: *Provided, however,* That the payments and disbursements made under the provisions of this section for and in connection with the payments and settlements of the claims herein described, and the said expenses of administration shall in no event exceed the sum of $8,500,000: *And provided further,* That said Secretary shall consider, approve, and dispose of only such claims as shall be made hereunder and filed with the Department of the Interior within three months from and after the approval of this Act: *And provided further,* That no claim shall be allowed or paid by said Secretary unless it shall appear to the satisfaction of the said Secretary that the expenditures so made or obligations so incurred by the claimant were made in good faith for or upon property which contained either manganese, chrome, pyrites, or tungsten in sufficient quantities to be of commercial importance: *And provided further,* That no claims shall be paid unless it shall appear to the satisfaction of said Secretary that moneys were invested or obligations were incurred subsequent to April sixth, nineteen hundred and seventeen,

and prior to November twelfth, nineteen hundred and eighteen, in a legitimate attempt to produce either manganese, chrome, pyrites, or tungsten for the needs of the Nation for the prosecution of the war, and that no profits of any kind shall be included in the allowance of any of said claims, and that no investment for merely speculative purposes shall be recognized in any manner by said Secretary: *And provided further,* That the settlement of any claim arising under the provisions of this section shall not bar the United States Government, through any of its duly authorized agencies, or any committee of Congress hereafter duly appointed, from the right of review of such settlement, nor the right to recover any money paid by the Government to any party under and by virtue of the provisions of this section, if the Government has been defrauded, and the right of recovery in all such cases shall extend to the executors, administrators, heirs, and assigns of any party.

That a report of all operations under this section, including receipts and disbursements, shall be made to Congress on or before the first Monday in December of each year.

That nothing in this section shall be construed to confer jurisdiction upon any court to entertain a suit against the United States: *Provided further,* That in determining the net losses of any claimant the Secretary of the Interior shall, among other things, take into consideration and charge to the claimant, the then market value of any ores or minerals on hand belonging to the claimant, and also the salvage or usable value of any machinery or other appliances which may be claimed was purchased to equip said mine

for the purpose of complying with the request or demand of the agencies of the Government above mentioned in the manner aforesaid.

Act of November 23, 1921, c. 137, 42 Stat. 322:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5 of the Act approved March 2, 1919, entitled "An Act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes," be, and the same is hereby, amended as follows:

Add to the first paragraph of section 5 the following proviso: "*Provided,* That all claimants who, in response to any personal, written, or published request, demand, solicitation, or appeal from any of the Government agencies mentioned in said Act, in good faith expended money in producing or preparing to produce any of the ores or minerals named therein and have heretofore mailed or filed their claims or notice in writing thereof within the time and in the manner prescribed by said Act, if the proof in support of said claims clearly shows them to be based upon action taken in response to such request, demand, solicitation or appeal, shall be reimbursed such net losses as they may have incurred and are in justice and equity entitled to from the appropriation in said Act.

"If in claims passed upon under said Act awards have been denied or made on rulings contrary to the provisions of this amendment, or through miscalculation, the Secretary of the Interior may award proper amounts or additional amounts."

Act of February 13, 1929, c. 182, 45 Stat. 1166:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any claimant who has heretofore filed with the Secretary of the Interior within the time and manner provided by existing law a claim under said Acts generally known as the War Minerals Acts (Fortieth Statutes, page 1272, and its amendments) may within one year from the date of the passage and approval hereof petition the Supreme Court of the District of Columbia to review the final decision of the Secretary of the Interior upon any question of law which has arisen or which may hereafter arise in the adjustment, liquidation, and payment of his claim under said Acts, but the decision of the Secretary of the Interior on all questions of fact shall be conclusive and not subject to review by any court.

SEC. 2. In any proceeding brought under the provisions of section 1 of this Act the Secretary of the Interior shall be designated as the defendant or respondent, and upon the filing of the petition the cause shall follow the usual procedure, subject to such rules or orders as the court may make with respect thereto.

SEC. 3. Jurisdiction is hereby conferred upon the Supreme Court of the District of Columbia, as a district court of the United States, to hear and determine all such suits and enter all orders, judgments, and decrees therein, subject to the usual right of appeal by either party to the Court of Appeals of the District of Columbia, whose final judgment may be reviewed by the Supreme Court of the United States by petition for certio-

rari or by appeal as provided by law and the rules of the court.

SEC. 4. Upon the final disposition of such proceeding, the clerk of the Supreme Court of the District of Columbia shall without delay certify to the Secretary of the Interior the final judgment or decree rendered therein, whereupon the Secretary of the Interior shall proceed with the final adjustment of said claim in accordance with the law as construed by the court in such judgment or decree.

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CHARLES ELMORE

No. 335

In the Supreme Court of the United States

OCTOBER TERM, 1932

RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR,
PETITIONER

v.

THE UNITED STATES OF AMERICA EX REL.
CHESTATEE PYRITES & CHEMICAL CORPORATION

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

BRIEF FOR THE PETITIONER

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The petition for certiorari was filed August 31, 1932, and the writ was granted October 17, 1932. (R. 38.) Jurisdiction is conferred upon this Court by Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the Secretary of the Interior erred, as a matter of law, in refusing to allow the items of respondent's claim under the War Minerals Relief Act of March 2, 1919, as amended, representing cost of machinery and equipment, salaries paid to corporate officers who were the sole stockholders of respondent corporation, and an amount paid for legal services which did not involve or contribute to the production of a war mineral.

STATUTES INVOLVED

These appear in the Appendix, *infra*, pp. 16–21.

STATEMENT

Pursuant to Section 5 of the Act of March 2, 1919, commonly known as the War Minerals Relief Act, and within the time permitted therein, the respondent filed a claim with the Secretary of the Interior for losses alleged to have been sustained in producing and in preparing to produce pyrites under the conditions specified in that Act. (R. 2, 7.) Thereafter awards totaling about $700,000 were allowed and paid to respondent, but various items of its claim were disallowed by the Secretary. (R. 30.)

On February 18, 1929, within the time limited by the Act of February 13, 1929 (*infra*, p. 20), respondent

filed in the Supreme Court of the District of Columbia a petition in the instant case for a writ of mandamus, seeking a review of the Secretary's final decision on questions of law arising in connection with the disallowance of certain items of the respondent's claim.[1] (R. 1–3, 24.)

The case was submitted upon respondent's demurrer to petitioner's answer and supplemental answer.[2] (R. 5, 6, 7, 24, 32.) The trial court sustained the demurrer and ordered that a writ of mandamus issue directing the Secretary of the Interior to proceed with the final adjustment of the disputed items of respondent's claim, and "finally to adjust those items of the claim as items allowable under the * * * act of March 2, 1919, in accordance with the amounts due as determined by him." (R. 32.)

Upon an appeal to the Court of Appeals of the District of Columbia by the Secretary of the Interior, the judgment of the lower court was affirmed. (R. 35–37.)

Thereafter the Secretary of the Interior petitioned this Court for a writ of certiorari to review the decision of the Court of Appeals as to three of the items in dispute below, and the writ was granted. The

---

[1] The disallowance by the Secretary of the Interior of an item of interest included in respondent's claim was under consideration in *Work* v. *Chestatee Co.*, 267 U. S. 185, and *Wilbur* v. *Chestatee Corp.*, 284 U. S. 231, 237.

[2] It is not now disputed, as it was in the Secretary's supplemental answer (R. 25), that the exhibits appearing in the record (R. 12–23) should be considered as exhibits to the Secretary's original answer. (See R. 32.)

pertinent facts with reference to the three disputed items, as set forth in the Secretary's answer and supplemental answer, are as follows:[3]

1. *Cost of Machinery and Equipment.*—Respondent, the Chestatee Corporation, was incorporated on July 24, 1917, by G. L. Pratt and N. P. Pratt, who became its sole stockholders. (R. 27.) Prior to any request to produce a war mineral by an authorized agent of the Government, the Pratts had acquired

[3] In the brief in response to the petition for certiorari the respondent relies for the facts with respect to the disputed items principally upon what is designated in the record as "Exhibit D." (R. 13–23.) This exhibit, which is a memorandum prepared by an Assistant Commissioner of the War Minerals Relief Commission, reviews respondent's claim and recommends that the Secretary of the Interior make an additional award to the respondent, which he subsequently did. (R. 23.) This Commission was an agency set up in the Department of the Interior to aid the Secretary in performing the duties imposed upon him by Section 5 of the Act of March 2, 1919, as amended. No provision was made for its creation in the Act and its decisions were not of course binding upon the Secretary, upon whom alone the responsibility of administering the Act was imposed. If there be any inconsistency between the facts stated in Exhibit D and those which the Secretary in his answer and supplemental answer alleged were his findings, we think that the facts set forth in the answers, which, so far as well pleaded, were admitted by respondent's demurrer, should be considered as controlling. While the rule appears to be that a written instrument which is attached to a pleading as an exhibit and which constitutes the basis of the pleading is controlling where the pleading misconstrues the effect of the written instrument (*Stockton Commission Co.* v. *Narragansett Cotton Mills*, 11 F. (2d) 618, 619 (R. I.), and cases cited), this is obviously not such a case. We have therefore used the answers of the Secretary as the basis for our statement of the facts.

certain equipment and machinery at a cost of $132,-139.31, and had acquired certain tools and miscellaneous items at a cost of $16,901.07. (R. 27.)

Subsequent to a request to produce by an agent of the Government, the Pratts turned over all of this property to the respondent, which in return issued its stock to the Pratts and assumed the unpaid balance of the purchase price of the property. (R. 27.)

In adjusting respondent's war minerals claim, the Secretary of the Interior allowed and paid the item of $16,901.07 in full, because it represented the value of articles which had been entirely lost through use in respondent's mining operations. (R. 28.) He also allowed and paid the sum of $26,427.86, as the fair rental value of the equipment and machinery used in the business of the corporation. This, together with an additional award of $32,453.27, which respondent admitted in an amendment to its petition that it had received (R. 24, 28), made the total award to the respondent in connection with the item of machinery and equipment $58,481.13. The Secretary refused, however, to allow the balance of the cost of the equipment and machinery, amounting to $73,658.18, because it represented the cost of prestimulated property acquired by the respondent's sole stockholders and incorporators, and was, therefore, in his opinion, outside of the scope of the Act of March 2, 1919, as amended. (R. 28.)

(2) *Salaries.*—The Pratts withdrew from the moneys of the corporation and distributed to themselves as executive officers salaries of $25,966.67.

In passing upon respondent's claim, the Secretary took the position that respondent, because of its complete control by the Pratts, stood in a position different from that of the corporation which is at liberty to bargain freely for the services of its employees, and that he was not compelled to allow as a loss sustained by the respondent in producing pyrites, an arbitrary amount which the Pratts had seen fit to distribute to themselves as salaries. After consideration and deliberation he determined, as a matter of fact, that all the respondent was entitled justly and equitably to receive as an allowance on account of the services of the Pratts was the sum of $4,032.[4] (R. 9–10; 26–27.)

(3) *Legal Services.*—The Secretary disallowed an item of $585.75 paid by respondent for legal services. While it does not appear in any of the pleadings what the nature of those services were, the Secretary alleged in his answer (R. 10) that "he is informed and believes that the legal services represented by the payment aforesaid, as a matter of fact, were rendered in connection with a matter which had no relation to a production or a preparation to produce pyrites by the petitioner, and accordingly were not within the terms of the act of March 2, 1919," and in his supplemental answer the Secretary alleged (R. 30) that he had "found as a matter of fact that legal services said to

[4] This represented a per diem of $4.00 for each of the Pratts for a period of 508 days. (R. 10.) The Secretary placed the Pratts, apparently, upon the same basis as any individual owner or partner in a mining enterprise who distributes to himself a fixed amount in the guise of salary. (See R. 22.)

have been rendered to the relator, and for which this payment was said to have been made, in no way involved the production or the preparation to produce a war mineral."

SPECIFICATION OF ERRORS TO BE URGED

The court below erred—

1. In directing the Secretary of the Interior to adjust as an item allowable under the Act of March 2, 1919, as amended, the cost of machinery and equipment which was acquired without request, demand, or other stimulation from any Government agency or officer, by persons who subsequent to April 6, 1917, and prior to November 12, 1918, and after the production of pyrites had been requested, organized and became the sole stockholders and incorporators of the respondent corporation, and who transferred to it the machinery and equipment in question in return for all the stock of the respondent corporation and the assumption by that corporation of their obligation to pay for the property.

2. In directing the Secretary to adjust as an item allowable under the Act of March 2, 1919, as amended, salaries which the two incorporators and sole stockholders of the respondent corporation distributed to themselves as executive officers from the funds of the respondent, even though the Secretary already had allowed and paid respondent corporation the amount which he had determined, as a matter of fact, was in justice and equity due it on account of the value of the services of the two stockholders.

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3. In directing the Secretary to adjust as an item allowable under the Act of March 2, 1919, as amended, an amount paid by respondent for legal services which the Secretary found, as a matter of fact, did not involve the production of a war mineral.

4. In affirming the judgment against the Secretary entered by the Supreme Court of the District of Columbia.

SUMMARY OF ARGUMENT

1. The machinery and equipment in question was not acquired by the Pratts pursuant to stimulation by the Government to produce pyrites. It did not change its status as nonstimulated property by its transfer, following stimulation, to a corporation which the Pratts organized and completely dominated through stock ownership. The corporate entity rule is not applicable in this case. The Secretary treated the property in the same way as any other property acquired prior to stimulation by allowing the claimant the fair value of its use during the stimulated period. His action in determining the proper amount to be allowed on this basis involved the decision of a question of fact, which is not subject to review.

2. The Pratts, because of their complete control of the respondent corporation, were in a position to pay themselves whatever salaries they saw fit. But the Secretary was directed to administer the Act of March 2, 1919, in accordance with principles of justice and equity. He was not obliged to allow any arbitrary amount which the Pratts chose to with-

draw from the respondent's funds in the guise of salaries. He made an allowance on account of their services of the amount which he determined should justly and equitably be awarded. There being no showing in the record that there was any abuse of his discretion in passing upon this question of fact, mandamus should be refused.

3. The Secretary found, as a matter of fact, that the legal services in question did not involve or contribute to the production of a war mineral. The express terms of the Act of March 2, 1919, forbid, therefore, any reimbursement of the expenditure for these services.

ARGUMENT

I

COST OF MACHINERY AND EQUIPMENT

This is not the ordinary case of a corporation which, under stimulation to produce pyrites to aid in the prosecution of the War, went into a free and open market and purchased machinery and equipment which it thereafter used in its mining operations during the stimulation period. In such a case, if the purchaser claims that it has suffered a loss, the item is one which, undoubtedly, the Secretary may not refuse to consider. But we have here quite a different situation.

The Pratts acquired the equipment and machinery in question before they were stimulated to produce pyrites by an authorized agent of the Government. Their purchase of the equipment and machinery was,

therefore, a matter entirely outside of the scope of the Act of March 2, 1919. It was nothing more than an ordinary business transaction by the Pratts. If the Pratts had retained the equipment and machinery and proceeded to produce pyrites in their own names pursuant to a request of the Government's agent, obviously they could have made no claim under the Act for loss on account of purchase of the machinery and equipment. But they assert that the equipment and machinery acquired an allowable status when, following a request to produce pyrites, they transferred this property to the respondent corporation, even though they organized this corporation after being stimulated to produce pyrites and through their ownership of its entire capital stock completely dominated it.

We do not think the property acquired any better status after its transfer than it had before. To have so held the Secretary would have had to blind himself to the pertinent facts. It is true that he disregarded the corporate entity rule, but it is well settled that this rule does not apply where a recognition of it would promote injustice or defeat the public convenience.[5] *Eichelberger* v. *Arlington Building*, 280 Fed. 997, 999 (App. D. C.); *United States* v. *Milwaukee Refrigerator Transit Co.*, 142 Fed. 247, 255 (C. C. E. D. Wis.); *M. Lowenstein & Sons* v. *British-Ameri-*

[5] That the respondent and the Pratts did not regard their interests as distinct when the claim was filed is evident. The Secretary's answer alleges that "the claim was filed in the names of the Chestatee Pyrites and Chemical Corporation, N. P. Pratt and George L. Pratt jointly." (R. 9.)

can Mfg. Co., 300 Fed. 853, 861 (Conn.). See also *Baker Motor Vehicle Co.* v. *Hunter*, 238 Fed. 894, 899 (C. C. A. 2d); *Smith* v. *Moore*, 199 Fed. 689, 697 (C. C. A. 9th); *In re Watertown Paper Co.*, 169 Fed. 252, 257 (C. C. A. 2d). Here the Secretary was administering an Act which contained the mandate that he should make only "such adjustments and payments in each case as he shall determine to be just and equitable." It would not have been "just and equitable" for the Secretary under the facts in this case, to have treated the instant claim any differently from that of any other claimant who had acquired property prior to stimulation. And he did not treat the claim any differently. He allowed the respondent the fair value of the use of the property during the period of stimulation. Unless he committed an error of law in refusing to consider respondent's acquisition of the property as a stimulated transaction, his action in determining the proper amount to be awarded the respondent corporation for the use of its property involved the decision of a question of fact which, under the Act permitting this suit to be brought, may may not be reviewed in the courts. (Sec. 1, Act of February 13, 1929, *infra*, p. 20.)

The court below, in passing upon this item, completely ignored the real question presented by the pleadings (R. 27–29) and by the Government's assignment of errors (Assignment 2, R. 33). It made no distinction between stimulated and nonstimulated transactions, but treated the case as presenting the

same question as that involved in the decision of this Court in *Wilbur* v. *Vindicator Company*, 284 U. S. 231. The question here presented is not whether a purchaser of mining property acquired pursuant to a request by an authorized governmental agency to produce a war mineral should be reimbursed under the Act of March 2, 1919, if the property has sustained a loss in value, even though the purchaser still retains the title to it, but whether, under the facts of this case, the Secretary is required to treat a nonstimulated transaction as a stimulated one.[6]

II

SALARIES PAID TO PRATTS BY RESPONDENT

Despite the fact that the Secretary awarded to the respondent corporation on account of the services of the Pratts the amount which, after due consideration, he considered the corporation was in justice and equity entitled to receive, the decision below compels him again to consider the item, the court holding, in reliance upon the *Vindicator* decision, that the item

[6] The court below was possibly misled by the ambiguous phrasing of a statement appearing in a report to the Secretary of the Interior upon respondent's claim by an Assistant Commissioner of the War Minerals Relief Commission (R. 21), but it should be stated that the Secretary in his supplemental answer pointed out that "The statement of Assistant Commissioner Briar, referred to by the relator, that 'to allow for its purchase would be in fact to allow for the purchase of property,' had reference to 'equipment and machinery purchased before stimulation,' as is clearly shown by the context." (R. 28–29.) We think this is a fair statement of the Assistant Commissioner's view, if the paragraph in which these statements appear is read in its entirety.

is in the same category as "interest paid on borrowed money which was lost in the enterprise." (R. 36.)

In so holding, the court below evidently misunderstood the question at issue. This is not a case where the salary paid to an officer of a corporation was fixed as the result of a free and untrammeled course of dealing. Here the Pratts, because of their complete control of the respondent corporation, were in a position to pay themselves any sums as salaries which they saw fit. But the Secretary was certainly not required in administering an Act which directed him to proceed according to principles of equity and justice to make an award on any such basis. Dissimilar only in its mechanics, the situation here presented does not differ in any essential respect from the claim of an individual owner of, or a partner in, a mining enterprise who takes out of the business whatever amount in the guise of salary may suit his desire. In his answers below the Secretary alleged that after due consideration he determined that, in justice and equity, all that the respondent was entitled to receive on account of the Pratts' services was the sum of $4,032. (R. 9–10; 26–27.) This was a finding of fact by the Secretary, and the exercise of his judgment and discretion in that respect may not, we submit, be controlled by mandamus unless clearly arbitrary or capricious. (See *Wilbur* v. *Vindicator Co.*, *supra*, p. 237.) In the absence of anything in the record showing the contrary, it must, of course, be presumed that the Secretary exercised his discretion fairly and reasonably.

III

LEGAL EXPENSES PAID BY RESPONDENT

The last item in dispute involves a payment of $585.75 made by respondent for legal services. The nature of these services is nowhere disclosed in the record. But the Secretary alleges in his supplemental answer that he found as a matter of fact that the services in question "in no way involved the production or the preparation to produce a war mineral," and that "such services in no way contributed to the production of pyrites" (R. 30), and in his original answer he alleges that "he is informed and believes that the legal services represented by the payment aforesaid, as a matter of fact, were rendered in connection with a matter which had no relation to a production or a preparation to produce pyrites by the petitioner, and accordingly were not within the terms of the act of March 2, 1919" (R. 10). The Act of March 2, 1919, expressly recognizes that reimbursement may not be made unless the alleged loss occurs "by reason of producing or preparing to produce" a war mineral. (Sec. 1; *infra*, p. 16.) The error of the court below is in failing to take into consideration the specific finding of fact by the Secretary that the legal services for which respondent paid did not involve or contribute to the production of pyrites or any other war mineral. (See R. 36.) There is nothing in the *Vindicator* decision, to which that court refers, which recognizes that any other type of loss is compensable.

While there are allegations in the Secretary's answers which indicate that he may have been of the opinion that legal expenses are not, under any circumstances, reimbursable, we do not deem it necessary to discuss that question, in view of the Secretary's specific finding of fact that the services in question did not involve "the production or the perparation to produce war mineral."

CONCLUSION

The judgment of the Court of Appeals should be reversed and the case remanded to the Supreme Court of the District of Columbia with directions to dismiss the petition for mandamus.

Respectfully submitted.

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NOVEMBER, 1932.

APPENDIX

STATUTES INVOLVED

Act of March 2, 1919, known as the War Minerals Relief Act, c. 94, 40 Stat. 1272, 1274:

> SEC. 5. That the Secretary of the Interior be, and he hereby is, authorized to adjust, liquidate, and pay such net losses as have been suffered by any person, firm, or corporation, by reason of producing or preparing to produce, either manganese, chrome, pyrites, or tungsten in compliance with the request or demand of the Department of the Interior, the War Industries Board, the War Trade Board, the Shipping Board, or the Emergency Fleet Corporation to supply the urgent needs of the Nation in the prosecution of the war; said minerals being enumerated in the Act of Congress approved October fifth, nineteen hundred and eighteen, entitled "An Act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of those ores, metals, and minerals which have formerly been largely imported, or of which there is or may be an inadequate supply."
>
> The said Secretary shall make such adjustments and payments in each case as he shall determine to be just and equitable; that the decision of said Secretary shall be conclusive and final, subject to the limitation hereinafter provided; that all payments and expenses incurred by said Secretary, including personal services, traveling and sub-

sistence expenses, supplies, postage, printing, and all other expenses incident to the proper prosecution of this work, both in the District of Columbia and elsewhere, as the Secretary of the Interior may deem essential and proper, shall be paid from the funds appropriated by the said Act of October fifth, nineteen hundred and eighteen, and that said funds and appropriations shall continue to be available for said purpose until such time as the said Secretary shall have fully exercised the authority herein granted and performed and completed the duties hereby provided and imposed: *Provided, however,* That the payments and disbursements made under the provisions of this section for and in connection with the payments and settlements of the claims herein described, and the said expenses of administration shall in no event exceed the sum of $8,500,000: *And provided further,* That said Secretary shall consider, approve, and dispose of only such claims as shall be made hereunder and filed with the Department of the Interior within three months from and after the approval of this Act: *And provided further,* That no claim shall be allowed or paid by said Secretary unless it shall appear to the satisfaction of the said Secretary that the expenditures so made or obligations so incurred by the claimant were made in good faith for or upon property which contained either manganese, chrome, pyrites, or tungsten in sufficient quantities to be of commercial importance: *And provided further,* That no claims shall be paid unless it shall appear to the satisfaction of said Secretary that moneys were invested or obligations were incurred subsequent to April sixth, nineteen hundred and seventeen, and prior to November twelfth, nineteen hundred and eighteen, in a legitimate at-

tempt to produce either manganese, chrome, pyrites, or tungsten for the needs of the Nation for the prosecution of the war; and that no profits of any kind shall be included in the allowance of any of said claims, and that no investment for merely speculative purposes shall be recognized in any manner by said Secretary: *And provided further*, That the settlement of any claim arising under the provisions of this section shall not bar the United States Government, through any of its duly authorized agencies, or any committee of Congress hereafter duly appointed, from the right of review of such settlement, nor the right to recover any money paid by the Government to any party under and by virtue of the provisions of this section, if the Government has been defrauded, and the right of recovery in all such cases shall extend to the executors, administrators, heirs, and assigns of any party.

That a report of all operations under this section, including receipts and disbursements, shall be made to Congress on or before the first Monday in December of each year.

That nothing in this section shall be construed to confer jurisdiction upon any court to entertain a suit against the United States: *Provided further*, That in determining the net losses of any claimant the Secretary of the Interior shall, among other things, take into consideration and charge to the claimant, the then market value of any ores or minerals on hand belonging to the claimant, and also the salvage or usable value of any machinery or other appliances which may be claimed was purchased to equip said mine for the purpose of complying with the request or demand of the agencies of the Government above mentioned in the manner aforesaid.

Act of November 23, 1921, c. 137, 42 Stat. 322:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5 of the Act approved March 2, 1919, entitled "An Act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes," be, and the same is hereby, amended as follows:

Add to the first paragraph of section 5 the following proviso: "*Provided*, That all claimants who, in response to any personal, written, or published request, demand, solicitation, or appeal from any of the Government agencies mentioned in said Act, in good faith expended money in producing or preparing to produce any of the ores or minerals named therein and have heretofore mailed or filed their claims or notice in writing thereof within the time and in the manner prescribed by said Act, if the proof in support of said claims clearly shows them to be based upon action taken in response to such request, demand, solicitation or appeal, shall be reimbursed such net losses as they may have incurred and are in justice and equity entitled to from the appropriation in said Act.

"If in claims passed upon under said Act awards have been denied or made on rulings contrary to the provisions of this amendment, or through miscalculation, the Secretary of the Interior may award proper amounts or additional amounts."

Act of June 7, 1924, c. 327, 43 Stat. 634:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, to enable the Secretary of the Interior to lawfully pay adjudicated claims arising under the provisions of the so-called War Minerals Relief Act,

entitled, "An Act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes," approved March 2, 1919, as amended, the limitation in said Act on the aggregate amount to be disbursed thereunder in the payment of said claims is hereby repealed.

Act of February 13, 1929, c. 182, 45 Stat. 1166:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any claimant who has heretofore filed with the Secretary of the Interior within the time and manner provided by existing law a claim under said Acts generally known as the War Minerals Acts (Fortieth Statutes, page 1272, and its amendments) may within one year from the date of the passage and approval hereof petition the Supreme Court of the District of Columbia to review the final decision of the Secretary of the Interior upon any question of law which has arisen or which may hereafter arise in the adjustment, liquidation, and payment of his claim under said Acts, but the decision of the Secretary of the Interior on all questions of fact shall be conclusive and not subject to review by any court.

SEC. 2. In any proceeding brought under the provisions of section 1 of this Act the Secretary of the Interior shall be designated as the defendant or respondent, and upon the filing of the petition the cause shall follow the usual procedure, subject to such rules or orders as the court may make with respect thereto.

SEC. 3. Jurisdiction is hereby conferred upon the Supreme Court of the District of Columbia, as a district court of the United States, to hear and determine all such suits

and enter all orders, judgments, and decrees therein, subject to the usual right of appeal by either party to the Court of Appeals of the District of Columbia, whose final judgment may be reviewed by the Supreme Court of the United States by petition for certiorari or by appeal as provided by law and the rules of the court.

SEC. 4. Upon the final disposition of such proceeding, the clerk of the Supreme Court of the District of Columbia shall without delay certify to the Secretary of the Interior the final judgment or decree rendered therein, whereupon the Secretary of the Interior shall proceed with the final adjustment of said claim in accordance with the law as construed by the court in such judgment or decree.

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No. 335

In the Supreme Court of the United States

OCTOBER TERM, 1932

RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR, PETITIONER

v.

THE UNITED STATES OF AMERICA EX REL. CHESTATEE PYRITES & CHEMICAL CORPORATION

MOTION ON BEHALF OF THE PETITIONER TO MODIFY JUDGMENT AND MEMORANDUM IN SUPPORT THEREOF

In the Supreme Court of the United States

OCTOBER TERM, 1932

No. 335

RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR, petitioner

v.

THE UNITED STATES OF AMERICA EX REL. CHESTATEE PYRITES & CHEMICAL CORPORATION

MOTION BY PETITIONER TO MODIFY JUDGMENT

Comes now the Solicitor General, on behalf of the Secretary of the Interior, petitioner in the above-entitled case, and respectfully moves this Court to modify its judgment herein by directing that the judgment of the Court of Appeals for the District of Columbia be modified and that the case be remanded to the Supreme Court of the District of Columbia with directions to that Court to so modify its judgment that it will require the Secretary of the Interior, in his final adjustment of the disputed items of respondent's claim under the War Minerals Relief Act, to determine whether

any of the items were in fact losses suffered by the claimant and its stockholders by reason of producing or preparing to produce pyrites in compliance with any request or demand of any of the agencies referred to in said Act; and if so, to determine what allowance therefor shall be just and equitable, and to include such allowance, if any, in the final adjustment of the claim.

It is also respectfully moved that this Court stay the issuance of its mandate pending the disposition of this motion.

THOMAS D. THACHER,
Solicitor General.

FEBRUARY, 1933.

MEMORANDUM IN SUPPORT OF MOTION

In its opinion in this case, rendered on January 16, 1933, three items were considered which had been disallowed by the Secretary of the Interior in the adjustment of petitioner's claim under the War Minerals Relief Act. Upon an analysis of the record this Court concluded that each of the items appeared to have been disallowed by the Secretary of the Interior without consideration of the facts, and as matter of law, because none of them was of such a character as to be allowable under any circumstances. Concluding that the judgment of the Supreme Court, affirmed in the Court of Appeals, authorized a writ of mandamus directing that the Secretary of the Interior "should treat the disputed items in the respondent's claim as permissible as matter of law and to proceed with their final adjustment upon consideration of all the facts," this Court affirmed the judgment below.

It appears that under the judgment of the Supreme Court of the District of Columbia (R. 32) which was affirmed in the court below (R. 37) it may with some reason be contended that the Secretary of the Interior is required to allow all of the items in question; that the only question open for his consideration is the amount of each item actually expended, and that it will not be permissible for the Secretary to consider, as a question of fact, whether the equipment and machinery was ac-

quired prior to any stimulation under the statute by the sole stockholders of the corporate claimant, and having found the fact to be that it was not so acquired, to disallow the item either as matter of law or because he considers that justice and equity require that no allowance be made. Similarly, there is at least room for contention that under the judgment of the Supreme Court of the District of Columbia the Secretary will not be free to consider whether the expenditures for salaries were reasonable and necessary in the production of a war mineral, or whether the attorneys' fees were incurred in producing a war mineral.

The modification of the judgment of this Court as suggested in this motion is deemed to be necessary in order to enable the courts below to effectuate the decision of this Court as outlined in its opinion.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.
SETH W. RICHARDSON,
Assistant Attorney General.
W. MARVIN SMITH,
Attorney.

E. C. FINNEY,
Solicitor, Interior Department.
O. H. GRAVES,
Assistant to the Solicitor,
Of Counsel.

FEBRUARY, 1933.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

DOCKET NO. 335

RAY LYMAN WILBUR, Secretary of the Interior,

Petitioner,

versus

THE UNITED STATES OF AMERICA EX REL. CHESTATEE PYRITES & CHEMICAL CORPORATION,

Respondent.

MOTION OF RESPONDENT TO ADVANCE

EDGAR WATKINS,
MARION SMITH,
MAC ASBILL,
Counsel for Respondent.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

DOCKET NO. 335

RAY LYMAN WILBUR, Secretary of the Interior,

Petitioner,

versus

THE UNITED STATES OF AMERICA EX REL. CHESTATEE PYRITES & CHEMICAL CORPORATION,

Respondent.

MOTION OF RESPONDENT TO ADVANCE

COMES NOW respondent in the above entitled cause and moves that this case be advanced for early hearing and in support of its motion makes the following brief statement of the matters involved and the reasons relied upon for the advancement:

1.

The case involves the correctness of the disallowance as a matter of law by the Secretary of the Interior of items of respondent's claim under the War Minerals Relief Act of March 2, 1919, as amended, representing cost of certain machinery and plant equipment, salaries paid to corporate officers who were the sole stockholders of respondent corporation and the amount paid for legal services. Questions involving the Secretary's disallowance of salaries and legal expenses are presented in a number of suits now pending in

the Supreme Court of the District of Columbia. It is in the public interest to have a speedy determination of the issues involved herein in order to expedite the administration of the War Minerals Relief Act.

2.

Suits pending in the Supreme Court of the District of Columbia and argued in June, 1932, have not been decided, presumably awaiting a decision of this case, as similar questions are involved.

WHEREFORE, respondent prays that the case be advanced upon the calendar and assigned for hearing at an early date.

Respectfully submitted,

EDGAR WATKINS,
MARION SMITH,
MAC ASBILL,

Counsel for Respondent.

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NO. 335

In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR,
Petitioner,

vs.

THE UNITED STATES OF AMERICA EX REL. CHESTATEE PYRITES & CHEMICAL CORPORATION,
Respondent.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI

By
MARION SMITH,
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September 15, 1932.

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Respondent.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI

THE LEGAL ISSUES HAVE ALREADY BEEN DETERMINED IN PRINCIPLE BY THIS COURT.

The Act of March 2, 1919, gives respondent the right to receive an award for its "net losses." "Net losses" means any net losses. Whether a particular item is a loss is a question of law for the Court. The amount of the loss is an issue of fact for the Secretary fairly and equitably to decide. This Court applied the principle that all net losses are comprehended by the statute unless "limited" or "excepted" by definite provision thereof. See the above quoted words used in Wilbur v. United States, 284 U. S. 231.

A complete statement of the matters involved in this case will disclose that the questions of law sought to be raised are too insubstantial and too definitely settled to justify the granting of the writ. The three specifications stated by petitioner will be considered separately.

PURCHASE OF PROPERTY.

Prior to stimulation the Pratts, individually, had contracted to purchase certain mining machinery, etc. After stimulation the Chestatee Corporation was organized for the sole purpose of carrying out the requests of the Secretary of the Interior to produce pyrites.

The Secretary, as shown in Exhibit D to his answer herein (R. 16), found:

> "In this particular case, as is testified, the then Secretary of the Interior personally requested one of the claimants to operate the properties on a big scale, which claimant at first declined to do, unless the Government should underwrite the venture. This, of course, was impossible, and, after some delay, the Secretary, through his personal agent, requested Ashcraft and Wilkinson to use their influence to induce claimant *to enlarge* his operations * * * ."

In the same exhibit (R. 19, approved R. 22) the Secretary found:

> "Equipment and machinery purchased before stimulation but used during stimulation will be given a liberal rental or depreciation credit only. The reason why its *Purchase price* will not be allowed is because the Government was in no wise responsible for its *purchase*, and the claimant at the moment he purchased the property had incurred any loss that might come, and that loss was therefore his own. To allow for its *purchase* would be in fact to allow for *the purchase of property*." (R. 19).

In petitioner's answer (R. 25) he says:

> "Thereafter, and subsequent to stimulation, the Pratts turned over all of this aforesaid property to the Chestatee Corporation *in return, as respondent understands and believes, for the stock in that corporation* which they had issued to themselves, and *in part consideration* of a so-called agreement which they, themselves, made on behalf of the corporation, as its incorporators and sole stockholders, whereby *the corporation assumed such portion of the indebtedness*, which they, themselves, had incurred prior to stimulation through the purchase of the said machinery, equipment, tools, and miscellaneous items as then remained unpaid." (Emphasis supplied.)

No question is raised but that the money lost by the corporation in taking over by purchase, after stimulation, and assuming as part consideration thereof the obligations due on

this machinery and other property is a loss which within the Vindicator case, 284 U. S. 231 above, should be compensated unless the sole fact that it made the purchase thereof from those who became its stockholders requires a different ruling. This naked fact of stock ownership is asserted as a sufficient ground for disregarding the corporate entity. With deference to the Solicitor General, such a claim is frivolous, in view of the settled state of the law on this subject.

Klein v. Board of Tax Supervisors, 282 U. S. 19.

Donnell v. Herring-Hall-Marvin Safe Co., 208 U. S. 269.

Generally on the subject see Fletcher Cyc. Corp., Vol. 1, p. 84, et seq. under heading "Corporation as Distinct from Members."

SALARIES OF EXECUTIVE OFFICERS.

The same refusal of the Secretary of the Interior to recognize the corporation as distinct from its stockholders caused him to refuse to allow as a part of the corporate expenses incurred in carrying out the Government's request to produce pyrites the salaries paid to executive officers who were also stockholders. Had the executive officers not been stockholders reasonable salaries would have been allowed the corporation as a loss. The fact that they were the controlling stockholders caused the Secretary to refuse to allow any salaries whatever to them and allowed only their bare subsistence expense.

It will, of course, be readily conceded that salaries paid to those who controlled the corporation would have justified an inquiry as to the reasonableness thereof. The record is entirely silent of any suggestion that the aggregate amount of these salaries has ever been questioned from the standpoint of reasonableness.

The second specification in the petition for the writ of certiorari, on page six, if intended to suggest that the Secretary questioned the reasonableness of these salaries is without justification in the record. The Secretary merely held that he could allow no salaries at all to the officers who controlled the stock, (R. 20) saying:

> "A straight salary allowance to a partner or part owner of a property would mean the granting of a profit to him."

That the stockholders will not benefit further than in getting a release from their indorsement appears in the findings set up by petitioner who at R. 21 said:

> "Always, too, there was a realization that claimant in responding to Governmental request will suffer great financial loss, notwithstanding the generous provisions of the War Minerals Relief Act."

Again, the problem is simply whether the corporation shall be treated as a separate entity, and the suggestion that it should not be so treated is frivolous under the facts of this case and the authorities cited.

ATTORNEYS FEES.

The corporation had no function in life except to produce pyrites. Every expense it incurred was for this purpose and this alone. Exhibit "D" to the Secretary's answer, controling in this respect, shows the complete review of the situation by the Department of the Interior and demonstrates the correctness of this statement. Like any other corporation, this one incurred legal expenses, the amount here being moderate. They were expenses incurred in producing pyrites since every expense of the corporation looked to this end alone. The suggestion that the expense for attorney's fees was not an expense incurred in producing or preparing to produce pyrites can only mean that since the attorneys were not actually digging the material out of the ground the necessary expense incurred to them under the circumstances stated is not allowable. We again submit with deference that the contention is frivolous.

PRATTS NOT EQUITABLE OWNERS OF THE CLAIM.

On page nine of the petition the corporation is spoken of as "the alter ego of the Pratts" in a way to suggest that it is a mere medium to collect a claim for the benefit of the Pratts. Were this true as to the actual relationship it would not justify disregarding the corporate entity. The contrary is shown by the record.

The Interior Department has found that the corporation was without funds and its operations, in response to Government stimulation, were on borrowed capital. (R. 13).

The Department has also found that this capital was borrowed from Ashcraft-Wilkinson and that Secretary Lane himself induced them to make the loan. (R. 16).

The Department has likewise found that this borrowed capital was lost, and that notwithstanding awards heretofore made the claimant will still be left bearing a tremendous loss as a result of its response to Government stimulation. (R. 21. See also quotations above 2, 3, 4.)

All of these findings are made by the Department itself, and can not be questioned.

Hence, the ultimate beneficiary of this claim is the creditor whose money was loaned in response to Government stimulation.

In the rare cases where the corporate entity will be disregarded and the stockholders considered as the real parties at interest the court does so to ascertain the truth to prevent fraud and to disregard a fiction.

It is respectfully submitted that the petition should be denied.

MARION SMITH,
EDGAR WATKINS,
MAC ASBILL,
EDGAR WATKINS, JR.,
Counsel for Respondent,
Atlanta, Georgia.

September 15, 1932.

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Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

NO. 335

RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR, Petitioner,

versus

THE UNITED STATES OF AMERICA EX REL. CHESTATEE PYRITES & CHEMICAL CORPORATION, Respondent.

BRIEF FOR RESPONDENT CHESTATEE PYRITES & CHEMICAL CORPORATION.

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IN THE

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OCTOBER TERM, 1932

NO. 335

RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR, Petitioner,

versus

THE UNITED STATES OF AMERICA EX REL. CHESTATEE PYRITES & CHEMICAL CORPORATION, Respondent.

BRIEF FOR RESPONDENT CHESTATEE PYRITES & CHEMICAL CORPORATION.

THE ISSUE.

As respondent* conceives the issue in this case, it is: Are the losses suffered for expenditures for the items involved here within the provisions of the Act of October 5, 1918, as amended and supplemented by the Act of March 2, 1919?

With the issue as stated, the only showing required is that a claim for such losses was made and that such claim was disallowed because of the belief of the petitioner that the law did not permit such allowance.

---

*Respondent as used herein means Chestatee Pyrites & Chemical Corporation, claimant in the Interior Department and Relator in the trial court, and Petitioner means the petitioner herein, the Respondent in the trial court.

The petition for the writ of certiorari and petitioner's brief inadequately state the facts and therefore we believe it helpful to the Court to assemble the facts with reference to the broad, general issue and also with reference to the issue as to each particular item of the claim.

STATEMENT OF THE ITEMS CLAIMED.

The claim presented to the Secretary is based upon items as follows:

1. Property purchased as a result of the requests and demands of the Department of the Interior;
2. Expenditures for salaries paid executive officers; and
3. Legal expenses (R. 2, par. 6).

We do not consider the item of taxes as the petition for certiorari abandons any opposition to that item.

In answering the petition in the trial court petitioner admitted the allegations with reference to salaries and legal expenses but showed he was inadequately informed as to the property items (R. 7, Answer par. 6). That petitioner might be fully advised, an amendment was filed explaining the purchase of property item and saying:

> "The claim for property taken over as the purchase of property, is based upon the finding of said Briar* in said report, wherein he gave the cost of the prestimulated plant as $149,040.38, and out of which allowances were made of $16,901.07; $26,427.86 and $32,453.27; such allowances not being allowed as purchase of property, but as rental, proportion of salvage, and for tools, material, etc., completely used. The remainder of such cost, so found by said assistant commissioner, was disallowed on his statement that 'to allow for its purchase would be, in fact, to allow for the purchase of property.' " (R. 24).

By an amended answer, petitioner said:

---

*Assistant Commissioner who wrote the opinion of the Department of the Interior denying the items here claimed.

"The respondent denies as a *matter of law* that the salaries alleged to have been paid by the petitioner, that the property alleged to have been taken over in the nature of purchase of property by the petitioner, that the taxes alleged to have been paid by the petitioner, constituted losses sustained by it within the meaning of the act of March 2, 1919, and its amendments." (R. 25).

This allegation and this answer show that the issue is as stated above.

In Note 3, page 4 of petitioner's brief, an effort is made to escape the effect of the findings pleaded by him as exhibits. In the trial court it was contended notwithstanding the stipulation (R. 6, 31) that such exhibits should not be considered. The trial judge adjudicated that the exhibits were part of the answer (R. 32). It is now contended that the findings were merely advisory. If advisory, they were adopted when made part of the answer, and further, they were accepted and followed by the Secretary of the Interior (R. 23, Exhibit E). However, even the present Secretary's supplemental answer here is sufficient to show the facts on which this suit was based.

The trial judge, the amount of the items not being in dispute, adjudged that as to each of the items named petitioner "proceed with the final adjustment of the relator's claim * * * and finally to adjust those items of the claim as items allowable under the said act of March 2, 1919, in accordance with the amounts due as determined by him" (R. 32); "determined by him" means the determination shown in exhibits to petitioner's answer (R. 12–23).

The Court of Appeals, in affirming the judgment of the lower court, stated the issue as arising under the acts of October 5, 1918, and March 2, 1919, to be whether or not

"net losses incurred for the purchase of property prior to the stimulation period * * * and purchased by relator during the period and expenditures for * * * legal services and salaries * * * are items of net loss which the Secretary of the Interior is required by law to consider in adjudicating an award" (R. 34–36).

It is clear from the above that the trial judge and the Court of Appeals properly construed this case as involving solely a question of law which legal question is clearly and definitely stated herein, in the pleadings copied above and in the quotation from the opinion of the Court of Appeals.

1. Purchase of Property.

That property purchased and lost within the specified conditions of the act of March 2, 1919, construed with the act of October 5, 1918, is an allowable item, has been determined by this Court. Wilbur v. United States ex rel. Vindicator Consolidated Gold Mining Company, 284 U. S. 231. That respondent admittedly complied with the specified conditions of the statutes and is entitled to have its net losses adjusted, liquidated and paid, is not questioned (see R. 2, par. 4; R. 7, par. 4).

Petitioner, as stated above, sets up as an exhibit to his answer in the trial court a statement of the findings of the Department of the Interior with reference to the items of this claim. As to one piece of property, the loss on which was $750.00 (R. 22), petitioner has abandoned the contention made in the Court of Appeals (R. 33, par. 3). As to the other item of property, petitioner's findings begin the discussion by saying:

> "Then comes the equipment which was purchased before stimulation, but used during stimulation, which the auditor presents for consideration in connection with salvage." (R. 20).

Such findings then proceed to discuss another claim, describe a former holding of the Department of the Interior and say:

> "The reason *why the purchase price* will not be allowed is because the Government was in no wise responsible for *its purchase*, and the claimant at the moment he purchased the property had incurred any loss that might come, and that loss was therefore his own. To allow for its purchase would be in fact to allow for the *purchase of property*." (R. 21) (Italics ours.)

The findings then proceed to allow for supplies used up and for rental on property contracted for by N. P. and Geo. L. Pratt before stimulation and purchased after stimulation by the respondent corporation. In further discussing this item, it is said that the property so purchased by the Pratts, the original lessees, was, subsequent to stimulation, turned over to the Chestatee corporation in return for stock in that corporation and for the further consideration of the assumption by the corporation of the unpaid purchase price of the property (R. 27).* Petitioner answers that this property acquired by the Pratts before stimulation but sold by them and purchased by the respondent thereafter, was used "subsequent to stimulation in the production of a war mineral" (R. 27). The opinion then shows the total amount of this item, that there should be deducted therefrom amounts allowed as rental, salvage and an amount used up. Petitioner then finds the balance to be $73,658.18. This, says the opinion of Mr. Briar (R. 21), was disallowed because purchased by the Pratts, incorporators of claimant, prior to the stimulation date, although "it represented the balance of the *cost* of the claimant's (Chestatee Pyrites and Chemical Corporation's plant and equipment," and was "the purchase price" thereof. (R. 28). The statements by Mr. Briar were approved by the Secretary of the Interior (R. 23), occur in Exhibits D and E, part of the plead-

*The petition for certiorari, p. 4, says the "Pratts turned over * * * ." (See also brief of petitioner, p. 5). There should be added here what the record at page 27 shows, that this property was "turned over" to claimant, Chestatee Pyrites & Chemical Corporation, respondent here, in consideration of "the stock in that corporation which they had issued to themselves, and in part consideration of a so-called agreement which they, themselves, made on behalf of the corporation, as its incorporators and sole stockholders, whereby the corporation assumed such portion of the indebtedness, which they, themselves, had incurred prior to stimulation through the *purchase* of the said machinery, equipment, tools, and miscellaneous items as then remained unpaid." See also above where petitioner's pleadings refer to "purchase price," "its purchase" and "purchase of property."

ings herein, and control conflicting allegations, if any, in the answer.* However, even the supplemental answer which seeks to avoid the findings of petitioner's predecessor and which findings were stipulated as part of the Record (R. 5, 6, 31), shows a purchase for a consideration of stock and the assumption of the purchase price. This answer says:

> "Thereafter, and subsequent to stimulation, the Pratts turned over all of this aforesaid property to the Chestatee Corporation *in return, as respondent understands and believes, for the stock in that corporation* which they had issued to themselves, and *in part consideration* of a so-called agreement which they, themselves, made on behalf of the corporation, as its incorporators and sole stockholders, whereby *the corporation assumed such portion of the indebtedness*, which they, themselves, had incurred prior to stimulation through the purchase of the said machinery, equipment, tools, and miscellaneous items as then remained unpaid." (R. 27) (Italics ours.)

The trial judge found that the value of the property was as stated above and that it was "taken over by relator after stimulation" (R. 32). In the assignment of errors in the court below, paragraph 2 thereof, it was stated that this property was transferred to the corporation by its incorporators (R. 33).

Petitioner (Brief p. 5) says an award was made of $32,-453.27. The facts are: the Secretary made an award for such of the property as was sold to the corporation and *wholly used up* of $16,901.07; and an award for the rental value of said property not used up of $26,427.86. These were all the awards made under this item. The Secretary found that such property had, proportionate to the whole salvage of all respondent's property, a value of $32,453.27, and in our claim credit of such sum is given the Government as salvage. This leaves due claimant, if the law is as we contend, and under the findings of fact by petitioner the sum of $73,658.18 on this item.

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*Stockton v. Cotton Mills, 11 F. (2d) 618, 619, citing Howe v. Larkin, 119 Fed. 1005, Jobbins v. Kendall Mfg. Co., 196 Fed. 216, and also see Vital v. Kerr, 297 Fed. 956, 962.

It cannot therefore be questioned that the facts show without dispute that the Pratts, incorporators of respondent here, having a small plant, and having purchased certain property and machinery therefor, found themselves unable to comply with the demands of Mr. Secretary Lane greatly to enlarge the capacity to produce pyrites. Petitioner pleaded what his Department found:

> "In this particular case, as is testified, the then Secretary of the Interior personally requested one of the claimants to operate the properties on a big scale, which claimant at first declined to do. * * * the Secretary, through his personal agent, requested Ashcraft and Wilkinson to use their influence to induce claimant to enlarge his operations, and further, he asked them to assist in financing him." (R. 17).

Being so requested and financed, there was organized a corporation which purchased the property formerly owned by the Pratts. For this property so purchased, a balance of $73,658.18 was not awarded because, as said by the Secretary, it would be "in fact to allow for the purchase of property" (R. 21).

In this connection it must be remembered that the opinion of the Interior Department written by Mr. Briar, which is under review here, clearly shows that respondent here was practically coerced into the expenditure of the monies which it lost and for which it seeks an award. The opinion, set up as a portion of the answer of petitioner, says:

> "* * * the record showed that the then Secretary of the Interior, realizing no doubt that this property presented opportunity for the biggest production of pyrites in the entire country, used every means in his power to persuade the claimant to develop it. It is true that he could not and did not guarantee claimant against loss, but his full influence short of underwriting the project was exerted. Always, too, there was a realization that claimant, in responding to Government request, will suffer great financial loss, notwithstanding the generous provisions of the war minerals relief act." (R. 22).

2. Salaries.

At Record 22 appear expenditures made by respondent from June 18, 1917, to November 11, 1918, "agreed upon by the auditor for the Government and the auditor for claimant," and among such expenditures, for which no allowance was permitted, appears this item:*

"Executive salaries.....$25,966.67."

An award for this item was denied for the reason stated as follows:

> "A straight salary allowance to a partner or part owner of a property would mean the granting of a profit to him." (R. 22).

The amount and reasonableness of these salaries were not questioned but the author of the opinion evidently thought that if a man was a stockholder in a corporation, he was a "part owner" and not entitled to a salary therefrom.** It may be that a salary is a profit to the man who gets it but it is an expense to the corporation which pays it and here respondent paid salaries as is admitted and the only legal contention that could be made is, and that we understand is the one made, that because the officers were the sole stockholders of the corporation, they were not entitled to salary. That legal question we will discuss later.

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*To understand this finding the plan of the auditor for the Department of the Interior should be kept in mind. This plan is described as follows:

> " * * * that all expenditures during the stimulation period, or which properly should be charged to the period, were to be listed; that deductions for items not allowable and salvage were to appear, and that the net loss was thus to be shown." (R. 14).

**The subsistance allowance referred to in the petition for certiorari, p. 5, was not a salary but in "lieu of salary" because as quoted above, the Assistant Commissioner thought a salary was profit.

Referring to salaries, petitioner (Brief p. 6) says:

> "After consideration and deliberation he determined, as a matter of fact, that all the respondent was entitled justly and equitably to receive as an allowance on account of the services of the Pratts was the sum of $4,032. (R. 9–10; 26–27)."

Here again petitioner disregards the findings here sought to be reviewed. Let us look to the record cited. Pages 9 and 10 deny recovery because of the close identity of stockholders and corporation. At record 26–27, it is claimed that the Secretary considered the amount of the salary. This plea is disingenuous and conflicts with the opinion made part of such plea. The opinion says the amount was an expenditure (R. 22) and that no salary however large or small will be paid because (R. 22).

> "A straight salary allowance to a partner or part owner of a property would mean the granting of a profit to him. Subsistence is allowable, but if he is to receive compensation above subsistence it must come from profits earned by the corporation or partnership."

Salaries have uniformly been disallowed by the Secretary because he and his predecessors thought that the law did not authorize an allowance therefor. The reasonableness of a particular salary has, therefore, never been considered by petitioner or any predecessor and that issue of fact is open for consideration should the legal issue be decided in respondent's favor.

3. Legal Services.

That legal services were incurred to the extent of $585.75 is shown in the opinion set up by petitioner as his reasons for his findings heretofore made in this case. The rather naive answer is:

> "The Secretary also found that the services rendered by the attorneys conferred a continuing benefit upon the relator, and that their value was not lost to it in producing or in preparing to produce pyrites" (R. 30).

That the "expenditure" was made is agreed (R. 22) and that the amount was disallowed is unquestioned. The sole purpose of the corporation was to produce pyrites. Why a corporation is not entitled to hire a lawyer to advise it is difficult to understand. The only purpose for which respondent was organized was to develop a mine and produce a necessary mineral. In the course of executing this purpose, legal services were necessary and the record shows that the amount and fact of the expenditure therefor were "agreed upon by the auditor for the Government and the auditor for claimant" (R. 22).

STATUTES INVOLVED.

The Acts of March 2, 1919, November 23, 1921, and February 13, 1929, are copied in Appendices to the petition for the Writ of Certiorari. The Act of October 5, 1918, is, so far as necessary, copied as an Appendix hereto.*

THE CONTENTIONS OF PETITIONER.

Argument and Authorities.

Petitioner (Petition 6) as to items of purchase of property and salaries relies upon the claim of identity of Corporation and Stockholder and as to legal service upon the argument that legal services are not necessary in a mining operation.

As to expenditures for legal services, petitioner found they were incurred but said they "conferred a continuing benefit" and ergo "their value was not lost" (R. 30). No discussion of so illogical a conclusion is necessary.

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*Cases showing respondent's right to "just compensation" and a "liberal interpretation" of these statutes are: United States v New York, 160 U. S. 598; Stewart v. Kahn, 78 U. S. 11 Wall. 493, 504; Monongahela Navigation Company v. United States, 148 U. S. 312, 326; and Seaboard Air Line Ry. Co. v. United States, 261 U. S. 299.

The Claim Of Identity Of Corporation And Stockholder.

That executive officers are also stockholders, even if they be the sole stockholders does not deprive them of the right to receive salaries. The argument that salaries are profits is wholly unsound. A salary paid by a corporation is an expense deductible as such from income taxes and when paid and lost as here, it is a loss for which an award should be made. If the stockholders were not officers, some other person would have to be and there is no law requiring stockholders to work for their corporations for nothing.*

The argument that the corporation and its stockholders are one is equally unsound and is answered by this court, Klein v. Board of Tax Supervisors, 282 U. S. 19, 24, where the court said:

> "The corporation is a person, and its ownership is a non-conductor that makes it impossible to attribute an interest in its property to its members. Donnell v. Herring-Hall-Marvin Safe Co., 208 U. S. 267, 273, 52 L.ed. 481, 487, 28 S. Ct. 288."**

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*The word "salary" is "never applied in describing the gain, profit, or recompense which accrues to one who is conducting a business of his own" (Roberts v. Carrithers, 180 Ky. 315, 202 S. W. 659, 661). " 'Profits' and 'salary' are quite different terms." (Hoeland v. Lange, 113 Misc. 469, 471, 184 N. Y. S. 885). "Dividends are distinguished from salary." (Peo. v. Lynch, 254 N. Y. 427, 431, 173 N. E. 571).

**This rule is accepted and discussed in many cases and by text book writers. We cite but a few. Cases are collected in Exchange Nat. Bank v. Meikle, 61 Fed. (2) 176, 179, 180. A complete review of the subject, and of the cases, will be found in the new edition of Fletcher Cyclopedia Corporations, Vol. I, p. 84, et seq. under the heading "Corporation as Distinct from Members." See a discussion of the subject by Machen under the title "Corporate Personality," 24 Harv. Law Rev. 355.

The memorandum of the Assistant Commissioner, Exhibit D to the response, shows that the Chestatee Pyrites Corporation was without funds and that its operations in response to Government stimulation were on borrowed capital. (R. 13–21).

The Assistant Commissioner (R. 23) said:

> "Always, too, there was a realization that claimant in responding to Government request will suffer great financial loss, notwithstanding the generous provisions of the War Minerals Relief Act."

The utlimate parties at interest, therefore, under this claim are those who, were constrained by the Government to lend to the corporation the funds used in complying with the appeals from the Secretary of the Interior to produce Pyrites "on a big scale" (R. 17) as a patriotic service to aid in the crisis of a great war.

The Secretary, petitioner here, set up as an Exhibit to his pleadings findings, stating:

> "The activities of the Government to induce Ashcraft and Wilkinson to finance claimant, so that war needs might be met quickly and in large measure, were personal, direct, and effective. The fact that Secretary Lane, who himself had a part not only in the stimulation of claimant but, through suggestion, in the financing, recognized that Ashcraft and Wilkinson had performed a service to the Government, is evidence of that service." (R. 19).

Further he pleads:

> "It is established that they urged claimant to enlarge his enterprise, and that they volunteered to secure the money therefor" (R. 17).

To disregard the corporate entity and accept the stockholders as the real parties at interest is to proceed on a theory directly contrary to the facts. It arrives not at truth, justice and equity, but at the contrary. In a word—there is no such showing in this case as would justify the court in departing from the usual practice of treating a corporation as a separate

entity.* The quotation, p. 6 of petitioner's brief, with relation to legal services, again shows a conflict between pleading and exhibit. The exhibit (R. 22) shows an agreed expenditure "which properly should be charged" (R. 14), which was listed but deducted (R. 22) for the legally unsound excuses quoted above from the opinion of petitioner's predecessor. It will also be noted that while the original response (R. 10) is as quoted by petitioner, the supplemental response agrees with said opinion (R. 30). The fundamental error of the petitioner in dealing with the claims for salaries and for property purchased by the stockholders before stimulation and incorporation and sold to the corporation thereafter, is that he treated the corporation and the stockholders as one and the same.

Geo. L. Pratt and N. P. Pratt, when the Secretary of the Interior began urging them to produce "on a big scale," had leased some mineral property and contracted for the tools, equipment and machinery for the size plant necessary for a small but profitable enterprise. This lease and the tools, equipment and machinery were, under the urging of Mr. Secretary Lane and his agents, and against the wishes and judgment of Geo. L. Pratt, "turned over," sold to, the corporation for certain stock and the assumption by the corporation of the unpaid balance on undelivered machinery. Everything

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*The "entity rule" upon which we rely here is never disregarded except to prevent "illegality, fraud or injustice." See cases cited by petitioner, p. 10 of his brief, especially Eichelberger v. Arlington Building, 280 Fed. 997, 999, 1000. What was said in the Eichelberger case applies here:

> "How then, can it be said that the creation of the corporation and the conveyance to it of the property had the effect of perpetrating fraud or injustice against Eichelberger?" (P. 1000)

The United States, through Mr. Secretary Lane, promoted, under the conditions then constraining patriots, practically compelled, the "creation of the corporation" and no "fraud or injustice" against the United States is even adumbrated.

bought by respondent was necessary to and used in the enlarged operation. It can make no difference to the United States whether the Pratts or others were the sellers. Indeed, there would have been no reason in justice and equity why the Pratts themselves could not have recovered after they were induced to change their small and profitable enterprise to the enlarged one had they operated individually instead of organizing a corporation.

In view of the broad language of this court when the meaning of the statutes here involved was in issue here, it is surprising that questions settled in principle by your former decision should again be brought here.

It is respectfully submitted that the decision of the Court of Appeals is free from error.

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Counsel for Respondent.

November 28, 1932.

APPENDIX.

Act October 5, 1918.

A state of war having on the 6th day of April, 1917, been declared to exist between the United States and the government of Germany, the need for war minerals in this country, most of which were imported from abroad, became immediately imperative. It was apparent that the government could not and should not rely upon the continuance of such importations. We were forced to produce these minerals in this country.

How best to accomplish such production was one of the vital questions that confronted the government in the early days of the war. Large sums were devoted to advertising the needs of the government in this respect and in encouraging and stimulating immediate large-scale production of these minerals. Cabinet officers and other important agents of the Nation pleaded for such production. The question was extensively discussed in Congress, beginning early in 1918. The resulting bill finally passed and approved October 5, 1918, was entitled:

> "An Act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of those ores, metals, and minerals which have formerly been largely imported, or of which there is or may be an inadequate supply."

The Essential Substance of the Act.

The Act is printed 40 Stat. 1009 and following. Section 1 provides:

> "By reason of the existence of a state of war, it is essential to the national security and defense, and to the successful prosecution of the war, and for the support and maintenance of the Army and Navy, to provide for an adequate and increased supply, to facilitate the production, and to provide for an equitable, economical, and better distribution of the following-named mineral sub-

stances and ores, minerals, intermediate metallurgical products, metals, alloys, and chemical compounds thereof, to-wit: * * * pyrites * * * as the President may, from time to time, determine to be necessary for the purposes aforesaid, and as to which there is at the time of such determination, a present or prospective inadequacy of supply. The aforesaid substances mentioned in any such determination are hereinafter referred to as necessaries."

Section 2 authorized the President to purchase such necessaries and to enter into contracts for the production thereof. The section further makes certain provisions for the cost price, which shall be at a price not "less than the purchase or cost of production thereof."

Section 3 authorized the President to take over mines producing the named minerals, and provided:

> "The United States shall make *just compensation*, determined by the President, for the taking over, use, occupation or operation by the Government of any such necessaries or any such land, deposit, mine, smelter, or plant, or part thereof." (Italics ours.)

This section also provided that if the "just compensation" to which the owner was entitled could not be agreed upon with the President, suit therefor or for a part thereof could be maintained.

Sections 4 and 5 are administrative.

Section 6 appropriated the sum of $50,000,000 to "be used as revolving fund for carrying out the objects of this Act, and for the purpose of making all payments and disbursements, including *just compensation* under section three."

Sections 7, 8 and 9 are administrative and not material here.

Section 10 terminated the operative force of the Act, upon the proclamation of peace by the President.

Sections 11 and 12 are not material here.

This Act in effect would have authorized the President or his agents to enter into whatsoever arrangements were deemed necessary for procuring an adequate supply of these war

minerals. Had the war continued, the President under this Act would have been enabled fully to protect those who answered the call of the Government to produce these minerals. However, as the Act was approved so near the date of the Armistice, it was never resorted to.

With the cessation of war, the demand for these war minerals practically ceased, and the producers were faced with immediate and heavy losses. How to give "just compensation" (Section 3, Act of Oct. 5, 1918, supra) to those persons who at the request of certain named agencies of the government had in effect surrendered their properties to the government, was the question then presented to Congress, and after hearings, and on the 23d day of December, 1918, Senator Henderson introduced a bill entitled:

Title of Bill, Senate.

> "A Bill to supplement an Act of Congress approved October fifth, nineteen hundred and eighteen (public numbered two hundred and twenty), and to authorize the Secretary of the Interior from the funds appropriated by said Act to determine, adjust, and pay losses sustained by investments preparatory to production of war minerals mentioned in said Act."

After discussions in the House and Senate and by Conference Committees, the Act of March 2, 1919, was passed. (See history, Appendix to Brief in Docket 67, October Term, 1931.)

FILE COPY

No. 335

FILED
DEC 5
CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1932.

RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR, *Petitioner*,

v.

THE UNITED STATES OF AMERICA EX REL.
CHESTATEE PYRITES & CHEMICAL CORPORATION.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

REPLY BRIEF FOR RESPONDENT.

EDGAR WATKINS,
MARION SMITH,
Attorneys for Respondent.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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THE UNITED STATES OF AMERICA EX REL.
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ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

REPLY BRIEF FOR RESPONDENT.

This reply to petitioner's brief is intended merely to furnish the court a convenient reference to the pages in the transcript from which the facts actually presented by this case can be determined. It will appear from them that the brief of petitioner seeks to sustain decisions which the Secretary of the Interior has never made.

Under the Act of 1929 the only function of a court under this proceeding is to review rulings of law by the Secretary.

I.

The decision actually made by the Secretary is in writing and shown by the report of Asst. Commissioner Briar afterwards adopted in writing by the Secretary.

(a) Briar's report, Transcript 12-23.

(b) Secretary Falls adoption of this report as his decision, Transcript 23.

(c) This action affirmed and adopted by present Secretary.

(1) In original response, Transcript 4.

(2) By stipulation making exhibits part of record, Transcript 6.

(3) By second response, Transcript 9 and 11.

(4) Last response shows no decision contrary to that of Secretary Fall, Transcript 28.

II.

As to salaries of executive officers the only decision made by the Secretary is that no salaries could be paid officers who were also stockholders. This is purely a question of law. No question of the reasonableness of salaries actually paid has ever been raised by the Department.

(a) Plan of accounting adopted by the Department was to treat the corporation as organized for and engaged only in carrying out the Secretary's plan of producing war minerals. This was in fact the case. Hence the Department first set up all disbursements in period and then deducted those which it refused to allow, Transcript 14.

(b) Salaries were deducted because Department held as matter of law a stockholder could not draw a salary, Transcript 23.

(c) This position re-asserted in second response, Transcript 26.

(d) No question of reasonableness of salaries has ever been raised. Actually salaries paid were very reasonable. The service covered 508 working days, Transcript 10. Hence the salary of each executive for managing a million dollar enterprise was about $750.00 per month.

III.

As to purchase of property the Secretary first held that this should be deducted because no compensation could be paid for losses growing out of purchase of property. Transcript 21.

Since the Vindicator decision the Secretary has said in his last response that this is disallowed because the property was bought by the incorporators before stimulation and sold to corporation after stimulation, thus refusing to treat the corporation as a separate entity. Transcript 28.

No question of the fairness of the sale from incorporators to corporation has ever been raised. By comparing claim with cost of property to incorporators (Transcript 27) it appears they turned in property to corporation at the exact cost to them, corporation assuming unpaid purchase price.

IV.

As a matter of law the corporation must be treated as separate from its stockholders. See cases in original brief.

V.

If this fiction of separate identity were disregarded, then under facts of this case justice and equity require it be treated as separate.

(a) The "big operation" of the property for which the corporation was formed was directly induced and procured by the Secretary. Transcript 17.

(b) The Secretary procured the money to be loaned to the corporation (not by stockholders) on which corporation operated and which was lost. Transcript 17.

(c) The Secretary used his "full influence" to bring about the enterprise. Transcript 22-23.

(d) In spite of compensation allowed by War Minerals Relief Act these losses can never be made good. Transcript 23.

Hence if the corporate veil is pierced the parties legally at interest are not the stockholders but the unpaid lenders who were induced by the Secretary to put their money into the enterprise.

Respectfully submitted,

EDGAR WATKINS,
MARION SMITH,
Attorneys for Respondent.

SUPREME COURT OF THE UNITED STATES.

No. 335.—October Term, 1932.

Ray Lyman Wilbur, Secretary of the Interior, Petitioner, *vs.* The United States of America, ex rel. Chestatee Pyrites & Chemical Corporation.	On Writ of Certiorari to the Court of Appeals of the District of Columbia.

[January 16, 1933.]

Mr. Justice McReynolds delivered the opinion of the Court.

The Act of February 13, 1929, c. 182, 45 Stat. 166, provides—

> "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any claimant who has heretofore filed with the Secretary of the Interior within the time and manner provided by existing law a claim under said Acts generally known as the War Minerals Acts (Fortieth Statutes, page 1272, and its amendments) may within one year from the date of the passage and approval hereof petition the Supreme Court of the District of Columbia to review the final decision of the Secretary of the Interior upon any question of law which has arisen or which may hereafter arise in the adjustment, liquidation, and payment of his claim under said Acts, but the decision of the Secretary of the Interior on all questions of fact shall be conclusive and not subject to review by any court."

Proceeding under the quoted provision, respondent corporation presented a petition to the Supreme Court—February 18, 1929—which alleged that while endeavoring to develop supplies of pyrites it suffered allowable losses through expenditures for salaries of executive officers, for taxes, for legal services, also by depreciation of property taken over upon request of the Department and that the Secretary had erroneously decided as matter of law that it was not entitled to reimbursement therefor. The prayer asked

review and determination of points of law upon which the Secretary's decision turned and a writ of mandamus directing him to take jurisdiction and allow whatever he might ascertain upon the facts to be just and equitable.

March 15, 1929, the Secretary made a commendably frank response to the rule to show cause. He admitted disallowance of the specified items "as shown by copies of the various decisions of the Secretary of the Interior and recommendations of the War Minerals Relief Commissioners marked, respectively, Exhibits A, B, C, D and E, attached to the response," which "are hereby referred to and made a part hereof." And he further said "Under the act of February 13, 1929, Public No. 728, 70th Congress, this court is vested with jurisdiction to review such questions of law as may have been decided in the disposition of petitioner's said claim by the Secretary of the Interior, and respondent makes no objection to, but on the other hand invites, a review of such questions. The petition for review presents the sole question for which petitioner prays a review herein, and it is assumed that the court will confine its review to the single question raised." On the same day a demurrer to the response was interposed.

September 24, 1929, by permission of the court, the Secretary withdrew the original response and presented a substituted answer. The order permitting this appears in the margin.*

*"In accordance with the stipulation of counsel for the respective parties in this case, dated September 2, 1929, and duly filed herein, it is this 24th day of September, 1929, adjudged and ordered:

"1. That the respondent be and he hereby is permitted to withdraw from the record the response to the relator's petition for mandamus heretofore filed by him.

"2. That the respondent be and he hereby is permitted to file and serve an answer in lieu of said response, and that the relator's demurrer to said response which is now on file, be permitted to stand and be considered a demurrer to such answer.

"3. That the uncertified copies of the findings of the Secretary of the Interior, of the War Minerals Relief Commission and of the Assistant Commissioner of War Minerals, which are attached to the substituted answer to be filed by the respondent in case at law No. 76361, entitled United States of America *ex rel.* Chestatee Pyrites and Chemical Corporation *v.* Ray Lyman Wilbur, Secretary of the Interior, may be considered in this case by the court with the same effect as though they were original papers.

"4. That this case remain in statu quo upon the docket of this court until further order of the court."

The writings designated "Exhibits A, B, C. D and E," by the original response were attached to the substituted answer. They show Departmental action relative to the matter in controversy, June 5, 1919, August 8, 1919, October 15, 1919, September 22, 1922, and September 28, 1922. Nothing affirmatively points to other important action.

Exhibit "D"—"Memorandum" by Assistant Commissioner Briar—recommends rejection of all the contested items and states the reasons therefor. Secretary Fall—Exhibit E (September 28, 1922)—accepted this recommendation and made the suggested award.

The item based on purchase price of equipment and machinery was rejected because "to allow for its purchase would be in fact to allow for the purchase of property." The Secretary's decision rested upon an erroneous conclusion as to a point of law which arose in the adjustment of respondent's claim. His view of the law thus announced, and long held by the Department, met disapproval in *Wilbur* v. *Vindicator, etc. Co.*, 284 U. S. 231. The respondent was and is entitled to an adjustment of this and other items as the Secretary "shall determine to be just and equitable" under the law as here construed.

Payments for salaries to the officers, who were also respondent's sole stockholders, were disallowed upon the view that, as matter of law, recovery on account of them would amount to forbidden profits to owners. Whether the sole stockholders of a corporation, acting as officers and managers, should be allowed anything by way of salary or compensation depends on the peculiar facts of each case. There is no positive legal inhibition; it is not matter of law.

The Briar report does not state why the item for legal services was disallowed—whether because of some undisclosed facts or upon some theory of the law. The latter appears the more probable. Certainly, it cannot be said that any rule of law inhibited payment necessary or proper for legal services.

Here petitioner presents no objection to the ruling below concerning taxes.

Counsel for respondent correctly states the issue presented to the trial court: "Are the losses suffered for expenditures for the items involved here within the provisions of the Act of October 5,

1918, as amended and supplemented by the Act of March 2, 1919?" And, "with the issue as stated, the only showing required is that a claim for such losses was made and that such claim was disallowed because of the belief of the petitioner that the law did not permit such allowance."

The record discloses that the Secretary's action was based upon improper construction and application of the law. The matter must go back for final adjustment upon consideration of the facts.

We have not overlooked the argument submitted for petitioner that the five Exhibits above referred to were not parts of the substituted and amended answers. Nor the assertions in these answers that the items in question were rejected upon consideration of the facts. The Exhibits show what was really done and the reasons therefor. Conflicting general statements in the answers must yield. And it seems proper to add that if these answers had been more carefully prepared, with purpose to disclose to the court all relevant facts and circumstances, unnecessary difficulties would have been avoided.

The final judgment of the Supreme Court recites that the cause came on to be heard "upon petition as amended and answer thereto as amended together with Exhibits A, B, C, D, and E to said answer, and the demurrer" etc. The Exhibits were correctly treated as parts of the amended answer. But a requirement that the parties recast the pleadings would have been proper and helpful.

The petition here for certiorari does not mention the conflicting view in respect of the Exhibits or deal with them as parts of the record. It failed adequately to adivse us concerning the real situation. But to avoid possible misunderstanding, it has seemed best to retain jurisdiction rather than to dismiss the writ because improvidently granted.

The judgment of the Supreme Court affirmed by the Court of Appeals authorized a writ of mandamus directing that the Secretary of the Interior should treat the disputed items in the respondent's claim as permissible as matter of law and to proceed with their final adjustment upon consideration of all the facts. We approve this action and affirm the judgment.

Affirmed.